JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA IN CIVIL
CITATION	**:**	YAP -v- MATIC [2022] WASC 181
CORAM	**:**	SOLOMON J
HEARD	**:**	12 APRIL 2022
DELIVERED	**:**	23 MAY 2022
FILE NO/S	**:**	CIV 1106 of 2022
BETWEEN	**:**	VIVIEN JIT SIEN YAP First Plaintiff EMPIRE SONS (AUSTRALIA) PTY LTD T/AS RAY WHITE (DALKEITH CLAREMONT) Second Plaintiff AND SANDI MATIC Defendant

Catchwords:

Interlocutory injunction - Maintenance of interim injunctive orders - Quia timet injunction - Tort of interference with business by unlawful means - Tort of interference with contractual relations - Tort of intimidation - Tort of injurious falsehood - Tort of defamation - Contempt of court - Compliance with O 55 r 5

Legislation:

Rules of the Supreme Court 1971 (WA)

Result:

The orders granting interim injunctive relief are continued as amended
The first plaintiff's application for committal of the defendant is adjourned

Category: B

Representation:

Counsel:

First Plaintiff	:	M L Bennett
Second Plaintiff	:	M L Bennett
Defendant	:	In Person

Solicitors:

First Plaintiff	:	Bennett + Co
Second Plaintiff	:	Bennett + Co
Defendant	:	Not Applicable

Case(s) referred to in decision(s):

Agustin-Bunch v Smith [2021] VSC 158
Allbeury v Corruption and Crime Commission [2012] WASCA 84; 42 WAR 425
Australian Broadcasting Corporation v O'Neill [2006] HCA 46
Beecham Group Ltd v Bristol Laboratories Pty Ltd (1968) 118 CLR 618
Caratti v Boban Pty Ltd (Administrators Appointed) [No 2] [2015] WASC 139
Carew-Reid & Ors v Carew Corporation Pty Ltd (Unreported, WASC, Library No 930254, 23 April 1993)
Deepcliffe Pty Ltd v Council of the City of Gold Coast [2001] QCA 342
Donaldson v Natural Springs Australia [2015] FCA 498
Fu v Winstar Group Pty Ltd [2014] WASC 496 [12].
Fu v Winstar Group Pty Ltd [No 3] [2020] WASC 222
Graham v Powell (No 4) [2014] NSWSC 1319
Hardy Finance Corporation v Ahern [No 3] [2010] WASC 403
Mervyn Jonathan Kitay in his capacity as liquidator of Computer Accounting and Tax Pty Ltd (in liq) and Computer Accounting and Tax Pty Ltd (in liq) [No 3] [2021] WASC 447
Ooranya Pty Ltd v ISPT Pty Ltd [2018] WASC 256

Patrick Stevedores Operations Pty Ltd v Maritime Union of Australia (1998) 82 IR 87
Polar Aviation Pty Ltd v Civil Aviation Safety Authority (No 4) [2011] FCA 1126
Porter v Steinberg [2019] WASC 291
R v Lovelady; Ex parte Attorney-General [1982] WAR 65; [1981] WASC 329
R v Pearce (1992) 7 WAR 395; [1992] WASC 341
R v Sweet [2021] QDC 21
Rookes v Barnard [1964] AC 1129
Sanders v Snell [1998] 196 CLR 329
Sheridan v Australian Pacific Airports (Melbourne) [2021] VSC 440
Twinside Pty Ltd v Venetian Nominees Pty Ltd [2008] WASC 110

SOLOMON J:

1 On 12 April 2022 I heard two applications. One was the plaintiffs' application to determine whether the interim injunctive orders I made in this matter on 11 February 2022 should be extended, varied, or discontinued pending the final trial of the matter. The other was the first plaintiff's (Ms Yap) application to determine whether the defendant (Mr Matic) had breached the orders of 11 February 2022 and whether I should grant Ms Yap's application for committal of the defendant for contempt of court.

2 Ms Yap is a licenced real estate agent and a director of the second plaintiff which trades as Ray White (Dalkeith Claremont) (Ray White). Ms Yap specialises in the sale of residential houses in the Claremont/Dalkeith/Nedlands area and has a high profile as a real estate agent in Perth's western suburbs.

3 In June 2021, Mr Matic and his wife engaged the plaintiffs to carry out a market appraisal on their residential home in Mount Claremont. A selling agency agreement was signed on the same day. The next day, an 'authority to auction listing agreement' was signed with the specified auction date of 4 September 2021. Ms Yap outlined to Mr Matic and his wife the process undertaken in the marketing and auctioning of their home. The home was put on the market and a contract for the sale of Mr and Mrs Matic's home was ultimately executed in December 2021.

4 The genesis of these proceedings lies in Mr Matic's discontent with the conduct of the plaintiffs during the sale of his and his wife's home, and his belief that the home was sold for less than its true value. The plaintiffs allege that in the process of voicing this discontent, Mr Matic's conduct amounted to defamation and threats so as to potentially endanger the plaintiffs' economic interests, and so as to engender in Ms Yap a fear for her safety.

5 It is important to emphasise at this point that this proceeding does not concern the merits or otherwise of Mr Matic's complaints in relation to the plaintiffs and the sale of his and his wife's home. Those complaints may be fully justified, partially justified, or not justified at all. That issue is simply something that does not call for the court's comment, less still evaluation or determination. Nor do the plaintiffs deny that Mr Matic is entitled to advance his complaints through legal proceedings or through complaints to the appropriate regulatory body.

Procedural Background

Hearing 11 February 2022

6 On 10 February 2022, Ms Yap and Ray White filed a writ in this court seeking an injunction and damages against Mr Matic in respect of statements and threats he had allegedly made regarding the plaintiffs' business and economic interests. On the same day, the plaintiffs filed a motion for interlocutory relief and sought an urgent ex parte hearing to restrain Mr Matic from doing various things that the plaintiffs perceived Mr Matic had threatened, or was intending to do, that would damage the plaintiffs' reputation and economic interests.

7 The matter came before me on an urgent ex parte basis on Friday, 11 February 2022. There is some significance to it having been a Friday because real estate agents typically have their most active periods on weekends, including home opens. The urgent application was supported by an affidavit sworn by Ms Yap.

8 Ms Yap annexed to her affidavit emails from Mr Matic to her and others reflecting Mr Matic's deep dissatisfaction with the plaintiffs' conduct with, and the outcome of, the sale process. On 1 December 2021 Mr Matic posted a highly critical google review of the plaintiffs. The plaintiffs allege the review was defamatory of them both.[1] Mr Matic's complaints continued and intensified as time went by and he perceived that his complaints were not being addressed.

9 Ms Yap also annexed communications she had received from a Mr Angus Mead. These comprised a letter from Mr Mead to Ms Yap dated 1 February 2022, and a one-page typed document which Ms Yap described as 'the note Mr Mead made of telephone calls with Mr Matic on 31 January 2022 and 1 February 2022'.[2] The note is not dated, and it appears to be a note of Mr Mead's simultaneous recollection of two telephone calls that he had with Mr Matic sometime prior to his authorship of the note. In evidence that subsequently emerged,[3] Mr Mead's version of his authorship of the note is that he wrote the entire note on 3 February 2022 in which he recorded his recollection of telephone conversations with Mr Matic on 31 January and 1 February 2022. In her affidavit of 10 February 2022, Ms Yap does not explain when she received the note. Plainly, she had received it by the time she swore her affidavit evidence on 10 February 2022.

[1] Statement of Claim (30 March 2022) [16].
[2] Affidavit of Vivien Jit Sien Yap (sworn 10 February 2022) [43].
[3] I set out this evidence at [24].

10 The letter from Mr Mead describes his title as 'National Relationship Manager'. His role appears to include trouble shooting or assisting to mediate and resolve disputes and complaints relating to the Ray White group.

11 The salient passages of Mr Mead's letter of 1 February 2022 included the following:

> I am writing this letter in concern for your physical safety, and want to make my best attempts to ensure your wellbeing.
>
> I received a call yesterday (31 Jan 22) from one of the vendors at roughly 1300h ….. The vendor was extremely upset with how the sale campaign was handled.
>
> Mr Matic proceeded to verbally threaten you in multiple ways. This included
>
> > I am going to put billboards up all around Perth to let everyone know how terrible Vivien is.
> >
> > I am going to make Vivien feel the pain I currently feel.
> >
> > There is nothing Vivien can offer me to make this right.
>
> I received a call today (01 Feb 22) … the vendor (Mr Sandi Matic) was requesting an update on the complaint.
>
> Mr Matic proceeded to verbally threaten you in multiple ways. This included:
>
> > I am going to make Vivien feel the pain I am feeling.
> >
> > I am going to follow Vivien around to every open home she attends.
> >
> > Vivien has ruined my life and now I want to ruin hers.
> >
> > I do not care what the consequences are, I do not care if you involve the police, I have nothing to lose.
>
> After these threats were made, I advised Mr Matic I would need to seek advice from the Western Australian Police. This behaviour is not acceptable from either a personal or professional standpoint and I was forced to terminate the call thereafter.
>
> I am concerned that, given what appears to be his unstable mental state, he poses a potential threat to you and your family. He has verbally stated his intent to act erratically and potentially commit some form of harm to you.

> We strongly urge you to approach the local authorities in Western Australia to ensure your continued safety and wellbeing. If you have any immediate concerns please do not hesitate to contact Mark Whiteman and please keep us informed of all developments.

12 Mr Mead's note of his phone calls with Mr Matic stated the following:

> **Call date 31/02/2022, 13:00pm**
>
> A- Hi Sandi, my name is Angus Mead and I am the national relationship manager for the Ray White Group. I have heard you are having issues with Ray White Dalkeith.
>
> S- Yes, I have issues with Ray White Dalkeith. Vivien has ruined my life.
>
> A- Can you elaborate further please?
>
> S- She is the reason my kids are being taken away from me and my wife leaving me.
>
> A- Sandi, I am a little confused as to why you are saying this?
>
> S- I am going to make her pay, she ruined my life. I am going to I am going put billboards up all around Perth to let everyone know how terrible Vivien is. I am going to make Vivien feel the pain I currently feel,
>
> A- What resolution are you looking for Sani?
>
> S- There is nothing Vivien can offer me to make this right.
>
> A- Are you after after compensation?
>
> S- Yes I want the money I lost on the home. It is over a million dollars.
>
> A- Thank you Sandi, I will look into this and come back to you.
>
> Call was Terminated.
>
> **Call date 01/02/2022, approximately 14:00pm**
>
> S- Hi Angus It's Sandi, I wanted to get an update on my complaint about Ray White Dalkeith.
>
> A- Hi Sandi, thank you for getting in touch. As we discussed yesterday I will review the matter and come back to you in the next 24-48 hours.

> S- Oh, It can't be that hard to go back to the office and tell me what they are going to do. Regardless of this, I am not going to be happy with what the office's position is.
>
> A- Sandi, I understand you are frustrated with this situation but I will need to investigate the matter before I can give you more information.
>
> S- I don't care what the office says. Vivien has ruined my life and I will make her pay.
>
> A- What do you mean by that Sandi?
>
> S- I am going to drive around to all of her open homes this weekend in my ute and put up signs at all of her properties.
>
> A- Sandi, this is becoming quite concerning, I need you to stop saying these remarks.
>
> S- No, Vivien has ruined my life. She has taken my kids away from me.
>
> A- Sandi, this communication needs to cease. I am not comfortable with who you are speaking.
>
> S- I don't care, Involve the police. I have nothing to lose. She will pay.
>
> Call was Terminated
>
> **Notes:**
>
> I had to ask for resolutions multiple times.
>
> Sandi was extremely aggressive thorough out both calls.
>
> Sandi showed no concern for the authorities or his behaviour.

13 In her affidavit of 10 February 2022, Ms Yap described her response to and concern about the information provided by Mr Mead as follows:

> I fear for my personal safety and that of my family which includes two young sons. In discussions I have had with Mr Matic, his behaviour has been erratic, menacing and intimidating. I am informed by Mr Mead that Mr Matic has displayed similar behaviour to him.
>
> Furthermore such adverse actions, if carried out, will gravely effect (sic) my business. I maintain a high profile in the media and such adverse comments could result in a substantial loss of earnings and damage to the goodwill of the Ray White name.[4]

[4] Affidavit of Vivien Jit Sien Yap (sworn 10 February 2022) [50] - [51].

14 In light of the sworn evidence presented to me and the pending weekend, I made interim orders and listed the matter for return before me at 10.30 am on the next business day, which was the following Monday morning, to allow Mr Matic to be heard. I also asked for evidence in respect of Mr Mead's communications with Mr Matic to be confirmed directly on oath by Mr Mead.

15 The interim orders I made on 11 February 2022 were as follows:

> **UPON the application of the plaintiffs by motion dated 10 February 2022 and UPON the plaintiffs' undertakings to pay to any party restrained or affected by the restraints imposed by this court, such damages as to be assessed by the court**
>
> **IT IS ORDERED THAT:**
>
> 1. The defendant is restrained and injunction is granted restraining the defendant until further order of this Honourable Court from:
>
> (i) attending or attempting to attend at any premises at which the first and/or second plaintiff are conducting an invited public viewing or 'home open' in respect of the proposed sale of such premises;
>
> (ii) erecting signage or any form of public notice of or concerning the first and/or second plaintiff at such properties;
>
> (iii) preventing, hindering or interfering with the access of any person to any of such properties which the first and/or second plaintiffs are conducting a 'home open';
>
> (iv) threatening the first plaintiff.
>
> 2. The plaintiffs have leave to serve with the Writ of Summons herein a copy of this order, a copy of the notice of motion and the affidavit of the first plaintiff and the plaintiffs' undertakings as to damages.
>
> 3. The plaintiffs' motion be adjourned and relisted at 10.30 am on Monday, 14 February 2022 at which time the plaintiffs shall have leave to apply for an extension of this interim order.
>
> 4. The defendant have liberty to apply on 24 hours' notice to vary or discharge this interim order.
>
> 5. Costs of this application be reserved.

Hearing 14 February 2022

16 In advance of the hearing on 14 February 2022, the plaintiffs filed an affidavit of service by a process server, a Ms Cheryl Harrison. She swore that all relevant documents had been served on Mr Matic at 12.30 pm on Friday, 11 February 2022 at his residence. The documents were served with a covering letter from the plaintiffs' solicitors which referred to the orders that had been made and made clear that the matter was listed for 10.30 am on 14 February 2022. Ms Harrison's evidence was that in response to the question '[a]re you Sandi Matic?', Mr Matic replied 'I don't want to be served'.[5] Ms Harrison's evidence was that she left the letter and documents clipped together as a bundle in the presence of Mr Matic.[6]

17 Prior to the hearing, the court also received a second affidavit of Ms Jessica Border affirmed 14 February 2022. That affidavit annexed an affidavit of Mr Mead. Ms Border explained that Mr Mead had not sworn his affidavit in compliance with the requirements of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA), and that Mr Mead had been unable to re-swear the affidavit in the correct form in advance of the hearing. The primary significance of Mr Mead's affidavit was his direct confirmation of the matters concerning his communications with Ms Yap set out in Ms Yap's affidavit of 10 February 2022 and his explanation that the note annexed to Ms Yap's affidavit was made by him on 3 February 2022, and that it was a true summary of his conversations with Mr Matic of 31 January and 1 February 2022.

18 The hearing on 14 February 2022 was listed for 10.30 am. It was delayed shorty because Mr Matic was not in attendance, and neither the court nor the plaintiffs had received any communication from him. The hearing began at 10.37 am in his absence. About ten minutes into the hearing, I received a message that Mr Matic was running late but was in the court building. Mr Matic appeared shortly thereafter. Mr Matic confirmed that he had the papers but that they were 'dropped off on the floor while cleaners were at home' and then 'they dropped on the front step as the cleaners were at home'.[7] Neither version appears to sit comfortably with the sworn evidence of the process server.

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[5] Affidavit of Personal Service by Cheryl Lorraine Harrison (sworn 14 February 2022) [6].
[6] Affidavit of Personal Service by Cheryl Lorraine Harrison (sworn 14 February 2022) [5] - [6].
[7] Transcript, ***Vivien Jit Sien Yap & Anor v Sandi Matic,*** Supreme Court of Western Australia, 14 February 2022, 6.

19 It became clear from Mr Matic's comments from the bar table that he disputed the statements attributed to him by Mr Mead's letter of 1 February 2022 and note of the telephone conversations. Mr Matic advised from the bar table that he had 'a recording of the conversation that Mr Angus [Mead] is referring to'.[8] Mr Matic went on to say, '[n]one of those things that he noted in the letter that were sent to Mrs Yap were ever, ever said'.[9]

20 I explained to Mr Matic that the court had received sworn evidence of the threats and that he was entitled to dispute that evidence, in which case the matter would need to be programmed to allow him the opportunity to present that evidence and for the matter to be argued.

21 I then sought to confirm with Mr Matic that he objected to the injunctive order by asking him: 'Do you object to the injunction and the orders made against you in relation to the alleged threat?'.[10]

22 What ensued from that point is illustrated by the following extracts from the transcript:

> **MATIC, MR:** Can I just answer that slightly differently? Because I don't even consent to the name that it's written on.
>
> **SOLOMON J:** I'm sorry?
>
> **MATIC, MR:** I don't consent to being referred to as someone all in capital letters or being governed by these policies…..
>
> My name's Sandi Matic, I'm a beneficiary of the Sandi Matic Trust. I'm a living man, and I actually do not consent to being governed. …Or being referred to as all capital letters name.
>
> …
>
> **SOLOMON J:** Well, let me take one of those things at a time. I don't understand what you mean by you object to being governed. What do you mean by that?
>
> **MATIC, MR:** Well, my name's all spelled all in lower case, but in upper case letters I'm not a person, I'm a living man.
>
> …
>
> **SOLOMON J:** Right. I'm not sure I've understood [what] you're saying is the difference between a living man and a person, Mr Matic.

[8] ts 14 February 2022, 7.
[9] ts 14 February 2022, 7.
[10] ts 14 February 2022, 8.

MATIC, MR: I'm not sure how that would be possible, but living man is a living man, governed under common law, person is an entity created by, essentially, a government. Is that not the case?

SOLOMON J: Well, you're named as a – you're there as the defendant as a person or a living person.

MATIC, MR: I'm a person. I'm a living man, not a person. A person's the –an entity or a unit or a corporation. I'm not a person. I'm---

…

MATIC, MR: I just don't consent to being governed by whatever – I don't even know what it is. But---

…

SOLOMON J: Okay. So let's come back to the first – the question I was exploring, Mr Matic. And that is do you object to the continuation of the orders that I made on Friday.

MATIC, MR: Yes.

…

MATIC, MR: I'm answering that question under duress, because my statement wasn't, I guess, accepted by the court. But yes, I do object.

SOLOMON J: Right. I'm not sure what you mean by duress and that your statement wasn't accepted. What – what statement is it that I haven't accepted?

MATIC, MR: That my name is Sandi Matic and I'm a beneficiary of the Sandi Matic trust and I do not consent to being governed or being referred to as my name written in capital letters with the last name---

SOLOMON J: I - if that's the basis of the objection, Mr Matic, I'm quite sure we can cure that and have your name un-capitalised, if that's what you would prefer. Would that solve the problem that you presently have?

MATIC, MR: I couldn't because it has been granted already against a different entity that's not me.

SOLOMON J: It's a different entity that's not you because it's spelt in capitals?

MATIC, MR: Because it's against a person. Under common law---

…

> **SOLOMON J:** I understand that you object to the orders that have been made. I need to be clear that as a matter of law, those orders do apply to you, whether they're –the name is spelt with capitals or without capitals. Those laws apply to you as a living man. That is, the orders I made on Friday are applicable to you. You need to appreciate that.
>
> **MATIC, MR:** I respect that, your Honour.[11]

23 Following that exchange, the possibility emerged that the matter may have been able to be resolved by the provision of an undertaking by Mr Matic to the plaintiffs.[12] In the circumstances, I adjourned the matter for a week to allow the parties to discuss the prospects of an appropriate undertaking. It was made clear to Mr Matic that in the interim the orders of 11 February 2022 would continue to apply.

Hearing 21 February 2022

24 The matter came back before me on 21 February 2022. By that time, Mr Mead had filed an affidavit dated 18 February 2022. In that affidavit, Mr Mead gave sworn evidence of his conversations with Mr Matic of 31 January, 1 February and 8 February 2022, and explained that the note I have referred to at [12] above was made by him on 3 February 2022, and that it was a true summary of the conversations with Mr Matic (the affidavit at [9] in fact refers to 'conversation' in the singular, but in context that must be a reference to the conversations of 31 January and 1 February 2022). Mr Mead also provided a transcript of his conversation with Mr Matic on 8 February 2022, which he had recorded.

25 When the matter came back before the court on 21 February 2022, I was advised by the parties, in effect, that the matter was not able to be resolved by an undertaking. In those circumstances, I explained to Mr Matic that the appropriate course was to give him the opportunity to put forward his evidence and then for the court to determine whether the injunction should remain. In the course of seeking to determine how long Mr Matic wished to have to prepare and present his evidence, Mr Matic made a number of complaints about the court process, the plaintiffs' lawyers, and the media. Among those complaints, Mr Matic alleged that the plaintiffs' lawyer, Mr Bennett, had been sending him 'misleading information' and 'non-existent Acts' that he was alleged to be breaching.[13] Mr Matic complained that it was 'ridiculous' that he

[11] ts 14 February 2022, 8 - 12.
[12] ts 14 February 2022, 12.
[13] Transcript, ***Vivien Jit Sien Yap & Anor v Sandi Matic,*** Supreme Court of Western Australia, 21 February 2022, 23.

was required to defend himself against 'lies' while the plaintiffs' lawyer was misleading him in a manner that Mr Matic described as 'preposterous'.[14] Mr Matic went on to allege that he had been the victim of threats, asserting 'Mr Bennett has been making threats to me and so has Ms Vivien [Yap] and Mr Mead. Everyone is making threats'.[15]

26 Mr Matic also complained that there was no procedural fairness.[16] At the hearing of 14 February 2022, Mr Matic had advised that he had a recording of his conversation with Mr Mead that would demonstrate the truth of what was said between them. Mr Matic proposed to play it to the court at the directions hearing. The plaintiffs objected to that course as Mr Matic had not provided a copy of the recording to Bennett + Co. I explained to Mr Matic that he could present the recording supported by an affidavit, and that the court was concerned to give him a fulsome opportunity to put forward his version of events, including the recording.[17] Ultimately, Mr Matic advised that he would require six weeks to prepare his affidavit evidence. I programmed the matter to accommodate Mr Matic's request, allowing him six weeks to file his affidavit evidence and listing the application for the interlocutory injunction for hearing on 12 April 2022.

27 I explained to Mr Matic that, in the absence of any other orders, the interim injunction granted on 11 February 2022 was to remain in place.[18]

28 Counsel for the plaintiffs then drew attention to the fact that Mr Matic had yet to file an appearance. Discussion then ensued regarding Mr Matic's appearance. Mr Matic advised that he did not accept the court's jurisdiction and then characterised the process as a 'charade'.[19] The availability of a conditional appearance, pursuant to which Mr Matic would have the opportunity to explain why he objected to the court's jurisdiction, was then conveyed to Mr Matic. Mr Matic advised that he would require an additional six weeks to determine whether he was going to object to the court's jurisdiction, and then a further six weeks to file his affidavits. Having heard further from Mr Matic and then briefly from Mr Bennett for the plaintiffs, I resolved to leave the timetable as it was, and I advised Mr Matic that if he did

[14] ts 21 February 2022, 23.
[15] ts 21 February 2022, 34.
[16] ts 21 February 2022, 26.
[17] ts 21 February 2022, 24.
[18] ts 21 February 2022, 38.
[19] ts 21 February 2022, 40.

file a conditional appearance, thus necessitating an argument about the court's jurisdiction, the timetable could be adjusted.

29 Following the directions hearing of 21 February 2022, late on the afternoon of Tuesday, 22 February 2022, the court sent an email to the parties in the following terms.

> Dear Parties
>
> I refer to the matter above, and to the hearing of Monday 21 February 2022 (the Hearing).
>
> At the Hearing, the defendant's attention was brought to the requirement to file an appearance.
>
> Under Order 5 Rule 11 of the Rules of the Supreme Court 1971, the appearance is required to be entered within 10 days of the writ being filed. That time has now passed.
>
> The defendant has advised orally that he intends to object to the court's jurisdiction. His Honour made it clear at the Hearing that if objection was to be taken to the court's jurisdiction, the defendant would need to file a conditional appearance.
>
> In the circumstances, His Honour proposes to make an order requiring the defendant to file either an appearance or a conditional appearance by **4.00 pm** on **Friday 5 March 2022**.
>
> If either party wishes to make a submission about this proposed order, please do so via email by **4.00 pm** on **Monday 28 February 2022**.

30 The email contained a typographical error that referred to Friday, 5 March 2022, rather than 4 March 2022. This was clarified in later correspondence.

31 In response to that email, on 23 February 2022 the plaintiffs indicated their consent to the proposed order. Mr Matic did not respond. After 4.00 pm on 28 February 2022, I made an order that the defendant, Mr Matic, enter either an appearance or a conditional appearance by 4.00 pm on 4 March 2022.

32 Mr Matic entered neither an appearance, nor a conditional appearance by 4.00 pm on 4 March 2022.

33 On 2 March 2022, Mr Matic raised a series of questions with court staff by telephone. These included questions about the meaning of the word 'appearance', allegations that the second plaintiff, Ray White, had been incorrectly named, allegations that the affidavit of Vivien Yap was

incorrectly sworn, and a request that the court bring the hearing forward so that the issues of jurisdiction and the injunction could be heard at the same time.

34 That same day, despite his request for six weeks to prepare evidentiary material, Mr Matic filed two affidavits, the substance of which I will return to later.

35 On the following day, 3 March 2022, Mr Matic sent a number of emails to the court. One of these emails contained a lengthy list of complaints and allegations, including an allegation of a deliberate failure to comply with proper procedures by the plaintiffs' lawyers, and the filing of fraudulent paperwork intended to mislead the court. The email also alleged incompetence on the part of 'court judicial officers & the honourable justice' by accepting the fraudulent paperwork and that the Supreme Court of Western Australia is liable for damages 'due to the courts (sic) negligence and incompetence'. Among other allegations, Mr Matic also submitted that Ms Yap and Mr Bennett ought to be required to issue a public apology 'for false allegations made against me whilst knowing that they are unfounded and fabricated'. Mr Matic concluded that email with the following:

> I sincerely hope that the court will accept these submissions as they are written in this email and not request that I file additional paperwork & fill unnecessary form (sic) for something that has been brought upon me as a result of the courts (sic) own negligence.

36 At 11.58 am on 4 March 2022, Mr Matic emailed the court in the following terms (with typographical errors corrected):

> I have filed 2 affidavits; have they been accepted? Will they be taken into account if I don't file an appearance?

37 At 1.42 pm on 4 March 2022, the court responded to the parties advising that the matter had been listed for directions at 4.30 pm on 10 March 2022. On Sunday, 6 March 2022, Mr Matic raised a series of questions in an email to the court. These questions were answered on Tuesday 8 March 2022, which precipitated further query from Mr Matic. He was then advised to raise his concerns at the directions hearing scheduled for 10 March 2022.

Hearing 10 March 2022 and Mr Matic's appearance

38 At the directions hearing on 10 March 2022, I outlined the procedural background and then sought to clarify from Mr Matic

whether he intended to enter an appearance and participate in the proceedings. After some exchange about what is meant by an 'appearance', which largely covered ground that had previously been explained, the following exchange took place:

> **MATIC, MR:** ... the appearance, if I understand it correctly, the – the named party, the defendant, is that a legal person or is that me as a living human being named in order for me to answer that question whether I'm appearing or not?
>
> **SOLOMON J:** Well, Mr Matic, as a matter of law, a living person is a legal person. I do not understand the distinction that you are drawing between a living person and a legal person. In law, a person who is alive has status, legal status, as a person. They are one and the same thing. They are not two separate identities or entities. Now, you are quite entitled to see them as separate if that is your belief. But the court proceeds on the basis named as the defendant –
>
> **MATIC, MR:** What is the definition of the word person?
>
> **SOLOMON J:** What - are you asking me for the definition of the word person?
>
> **MATIC, MR:** Well, yes. I'm – from a legal standpoint. A legal definition.
>
> **SOLOMON J:** A human being, for these purposes.
>
> **MATIC, MR:** The - it's not trust units or anything like that.
>
> **SOLOMON J:** No. It's a human being.
>
> **MATIC, MR:** Okay. Then I will appear.[20]

39 I then made an order giving Mr Matic until 4.00 pm on 14 March 2022 to file an appearance.

40 The plaintiffs made an application for the costs of the directions hearing of 10 March 2022 to be paid in any event, on the basis that it was Mr Matic's failure to comply with the order of 28 February 2022 that necessitated the hearing. Mr Matic opposed that application. Mr Matic claimed he 'had no idea what was going on' because of the email he received from the court at 1.42 pm on 4 March 2022 listing the matter for directions.[21] I reserved the costs at the time.[22]

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[20] Transcript, ***Vivien Jit Sien Yap & Anor v Sandi Matic,*** Supreme Court of Western Australia, 10 March 2022, 49 - 50.
[21] ts 10 March 2022, 56.

41 The position advanced by Mr Matic in respect of costs appears to be premised on an unspoken assertion that in the absence of the email from the court on the afternoon of 4 March 2022, Mr Matic would indeed have filed an appearance by 4.00 pm that afternoon notwithstanding his failure to do so since the directions hearing of 21 February 2022. I do not accept that contention as credible. The hearing of 10 March 2022 was necessitated solely by Mr Matic's failure to comply with the order of 28 February 2022. Mr Matic should pay the plaintiffs' costs of the directions hearing of 10 March 2022, and I so order. Those costs should be taxed if not agreed and paid within 14 days thereafter.

42 I observe that in the course of argument in relation to costs, Mr Matic confidently asserted that the court had granted him four weeks to file an appearance. Mr Matic said:

> **MATIC, MR:** Your Honour, if you actually look at the transcripts you - you actually told me I've got four weeks to file this initial appearance.[23]

43 That assertion did not accord with my recollection. I have checked the transcript. The assertion was wrong.

44 At the conclusion of the hearing, I once again informed Mr Matic that he remained bound by the interim injunction in the following exchange:

> **SOLOMON J:** … The other orders will remain in place, which means the interim orders that I have made remain. Do you understand that, Mr Matic?
>
> **MATIC, MR:** Yes.[24]

45 On the afternoon of 11 March 2022, Mr Matic experienced some difficulty filing his appearance electronically. He provided the appearance by email to my chambers accompanied by an assertion that the difficulties he had experienced amounted to discrimination against him. The email also contained the following statement:

> Without prejudice, Attached is the form to file an appearance for SANDI MATIC which I am submitting under duress & for fear of my well-being even though I have not caused harm in any way & I reserve all of my rights.

---

[22] ts 10 March 2022, 58.
[23] ts 10 March 2022, 56.
[24] ts 10 March 2022, 58.

46 Mr Matic was advised that same afternoon that the court was content to receive his appearance by email.

Application for committal of the defendant for contempt and further communications with the court

47 On 22 March 2022, Ms Yap filed an application for committal of Mr Matic for contempt of court, alleging that Mr Matic had breached the court's orders of 11 February 2022.

48 On 24 March 2022, the court received a further email from Mr Matic. It alleged that Mr Matic was being 'harassed' by the plaintiffs' lawyers who were 'bullying' Mr Matic to 'hand over the recording that I had transcribed in my [a]ffidavit'. That was a reference to the transcript annexed to Mr Matic's second affidavit of 2 March 2022 of his conversation with Mr Mead of 31 January 2022 which is considered below.

49 In an affidavit subsequently affirmed by Ms Border on 30 March 2022, the background to Mr Matic's allegations of bullying were exposed. In fact, what transpired was that the plaintiffs' lawyers had quite reasonably and politely requested a copy of the recording. The requests were met with repeated refusal, hostility, and allegations of perjury.

50 On 30 March 2022, the plaintiffs filed their statement of claim. The statement of claim essentially pleads the facts relating to the threats alleged by Mr Mead and seeks injunctive relief and damages.

51 The plaintiffs' lawyers sought to have the application for committal listed concurrently with the hearing set down for the injunction application on 12 April 2022. After inviting the parties to comment on that proposed course, I listed the application to be heard on 12 April 2022, together with the application for injunctive relief.

52 I also made orders for Ms Yap to file submissions in support of her application for committal by 5 April 2022, and for the defendant to file any affidavits or responsive submissions by 11 April 2022.

53 The first plaintiff filed submissions on 5 April 2022. Mr Matic did not file any material in response.

54 On 12 April 2022, the plaintiffs' application for interlocutory injunctive relief and for committal of Mr Matic for contempt came on for hearing.

Mr Matic's dealings with the court

55 Before I provide my reasons in relation to each application, I wish to make some observations about the conduct of Mr Matic throughout the course of the proceedings.

56 As indicated by the transcript passage I have included at [22], Mr Matic appears to hold a belief that he 'cannot be governed' by an order of this court. Over the course of the proceedings from time to time, this and other comments appeared to challenge the court's the jurisdiction.

57 As noted, by 2 March 2022 Mr Matic had not filed an appearance.

58 In his first affidavit filed with the court on 2 March 2022 prior to having filed an appearance, Mr Matic stated the following:

> I, Sandi Matic of [**redacted**] in the State of Western Australia, selfemployed, duly sworn make oath and say that:
>
> 1. I am submitting this affidavit under duress and fear of my wellbeing & any errors made due to my nonexistent knowledge of how to write in legalese is not to be used against my benefit & I reserve all of my rights.
>
> 2. I do not consent to be my name in all capital letters which is the person corporation trust.
>
> 3. I, One, living, breathing, man, the undersigned, Sandi, son of and made in the image and the likeness of my father and mother, Pavao and Sabina, given name Sandi, having a sound mind, without prejudice to My Godgiven rights and duties, being one who was born of and walks on the soil of God (Genesis 1), who is unschooled in the law, is not trained in legalese, who has never had an attorney, is without an attorney, and does not waive counsel, knowingly and willingly Declares and duly Affirms, according to law, in time of peace and not in time of war or emergency, in good faith, with no intention to delay or obstruct, and with full intent to preserve and promote the public confidence in the integrity and impartiality of the judiciary, that the preceding and following statements and facts are of my own firsthand knowledge, except where such matters are stated to be based on information and belief, in which case I have identified the source and confirm my belief in the accuracy and truth of that information, God help me.
>
> 4. I AM no person, no fictional being, no organization, trustee, employee, association, voluntary association, jointstock association, company, copartnership, firm, order or society,

either aggregate or part of any aggregate, or automatic aggregate, or public utility aggregate, whether organized or incorporated or not, and I am not misrepresenting my identity or origin, of Pavao and Sabina (maker, owner, ruler), of God (maker, owner, ruler).

5. I have not duly granted, ratified, bargained for, gifted, sold, pledged, optioned, or donated any power of appointment, special power of appointment, general power of appointment in trust, or any general or special franchise, or elective franchise name, character, labour, or living body to any other, for any consideration: including, but not limited to any option or opting, any promise, implied promise, successive promises, agreement, supposed agreement, identity, fiction, graven image, forbearance, grace, creation, or modification or destruction of a legal relation, trade name, trademark, service mark, title(s), or return promise, bargained for and given in exchange for a promise, privilege, benefit, reciprocity, indemnity, mutual indemnification, any present or future interest or otherwise.

6. There are two beings with the same name, one real, the undersigned, the other a person, a fictional being.

7. It is not possible that man can be two beings, man, and a person, a fictional being.

8. I attorned unknowingly. I only appear as the person. I think for, speak for, and act for it.

9. I own the claim of the ownership of the Estate, MATIC, SANDI.

10. In the event that any clerical errors or administrative mistakes are uncovered in the submissions of the Plaintiff 1, Plaintiff 2, and any Sworn of Affirmed affidavits that those parties or their legal representatives submit to the courts, I reject the notion that this ought to disqualify any of the fictitious statements made as part of this fictitious claim & reject the notion that the correct entities, companies, persons, parties, trusts are not liable for damages due to the above mentioned errors or mistakes in paperwork.

11. I submit to the court that should any formalities such as paperwork & forms that ought to be submitted as part of disputing this fictitious claim are missed by me but are mentioned in the affirmed affidavits submitted to the court, they are to be treated as if they were submitted with all the paperwork correctly done & not be disadvantaged for being a selfrepresented man, speaking and appearing for the fictional entity named as Defendant.

> 12. I reserve the right for claim for damages against myself & the trust of the fictional name listed on the proceedings that I am the beneficiary of SANDI MATIC trust and/or Estate, MATIC, SANDI without through any requirement to file new court proceedings & claims to correct the abovementioned errors & mistakes made during any of the submissions by Fictitious Plaintiff 1 & Fictitious Plaintiff 2 during their Fictitious claim.
>
> 13. I reject and & all punitive benefits.

59 In fairness to Mr Matic, I have endeavoured to examine his affidavit carefully in order to understand its content. As it happens, I am not unfamiliar with prolix and arcane texts, even the obscure, the esoteric or the mystical. However, I have not been able to distil a rational or coherent thread in Mr Matic's words that may assist the court in determining the issues before it, including the issue of whether Mr Matic was intending to enter an appearance or otherwise submit to the court's jurisdiction.

60 In an email dated 3 March 2022, after asserting that the process of the Supreme Court was 'broken', Mr Matic appeared to reiterate, in summary form, the position that he had sought to convey in his affidavit. Among other things in that email, Mr Matic stated:

> Just to elaborate however, I did not question the courts jurisdiction regarding hearing these matters but instead I disputed that the party name as defendant is me but instead it is a fictional person/trust with same name. I've detailed this in first affidavit and I've affirmed that I am not the named defendant but that I atoned unknowingly & that I appear as, speak for, and act for the PERSON & that I own the claim of the ownership to the Estate.
>
> Does that clear things up?
>
> Can you please advise when the affidavits & the other submissions that have been sent to your chambers today be actioned & when I ought to get a resolution?

61 That explanation is more succinct and digestible. But it is no more intelligible. Insofar as it asserts a distinction between the fictional 'PERSON' named as the defendant in these proceedings and Mr Matic himself, it is a distinction that is neither recognised by the law nor suggested by rational observation. Mr Matic is quite entitled to his belief in that distinction, but it is not one that can impact upon the court's jurisdiction. Mr Matic, as a person or as a 'living breathing

man', capitalised or in lower case, is subject to the court's jurisdiction and required to comply with its orders.[25]

62 In response to that email, by email on 3 March 2022 the court (by my associates) advised Mr Matic in the following terms:

> Dear Mr Matic
>
> The court's position is set out in the email of 28 February 2022, which I have **re-attached** for your convenience, and can also be found in the chain below.
>
> I reiterate that 'if no appearance or conditional appearance is filed by the time stipulated, the matter will proceed on the basis that the defendant will not participate in the proceedings'.

63 That same day, the court also advised Mr Matic by email in the following terms:

> His Honour wishes to clarify that if you believe you have been incorrectly named in the proceedings, you should file an appearance in your correct name.

64 As outlined above, Mr Matic did ultimately file an appearance with the court on 11 March 2022.

65 Nevertheless, Mr Matic's questions regarding his status as a 'person' did not abate. On 14 March 2022, Mr Matic sent further emails to my chambers. At 1.53 pm he sent an email that included the following:

> Also just to draw attention to the discussion I've had with Justice Solomon during the Directions hearing on Friday. I asked the Justice if the entity named as SANDI MATIC is me as a natural person and living man or legal person & his honour advised that it is all the same thing more or less (I am paraphrasing my recollection). He mentioned that natural person, legal person, juridical person is all the same thing as a living man or woman.
>
> Upon looking into this further the definitions I find on the *Black's Law Dictionary* online it says the following so I am confused as this information conflicts with what was said by Justice Solomon.
>
> <u>Could you please clarify with a response in writing?</u>

[25] See the comments of Cash DCJ in ***R v Sweet*** [2021] QDC 21 [6].

In the view of the Supreme Court of Western Australia/Justice Solomon, is a 'Natural Person' the same as 'juridical person' or 'Legal Person'.

Secondly, can you please clarify who or what is restrained by the temporary injunction?

a. Me, Sandi the living breathing man and natural person

or

B. Legally generated juridical person as defined below?

https://thelawdictionary.org/natural-person/

What is NATURAL PERSON

A human being, naturally born, versus a legally generated juridical person

https://thelawdictionary.org/juridical-person/

What is JURIDICAL PERSON

Entity, as a firm, that is not a single natural person, as a human being, authorized by law with duties and rights, recognized as a legal authority having a distinct identity, a legal personality. Also known as artificial person, juridical entity, juristic person, or legal person. Also refer to body corporate.

What is ARTIFICIAL PERSON

A nonhuman entity that is created by law and is legally different owning its own rights and duties. AKA jusistic person and legal person. Refer to body corporate.

What is PERSON

A man considered according to the rank he holds in society, with all the rights to which the place he holds entitles him, and the duties which it imposes. 1 Bouv. Inst. no. 137. A human being considered as capable of having rights and of being charged with duties; while a 'thing' is the object over which rights may be exercised.

PERSON

This word is applied to men, women and children, who are called natural persons. In law, man and person are not exactly-synonymous terms. Any human being is a man, whether he be a member of society or not, whatever may be the rank he holds, or whatever may be his age, sex, &c. A person is a man considered according to the rank he holds

> in society, with all the rights to which the place he holds entitles him, and the duties which it imposes.
>
> 1. Bouv. Inst. n. 137.
>
> 2. It is also used to denote a corporation which is an artificial person. 1 Bl. Com. 123; 4 Bing. 669; C. 33 Eng. C. L R. 488; Wooddes. Lect. 116; Bac. Us. 57; 1 Mod. 164.
>
> 3. But when the word 'Persons' is spoken of in legislative acts, natural persons will be intended, unless something appear in the context to show that it applies to artificial persons. 1 Scam. R. 178.
>
> 4. Natural persons are divided into males, or men; and females or women. Men are capable of all kinds of engagements and functions, unless by reasons applying to particular individuals. Women cannot be appointed to any public office, nor perform any civil functions, except those which the law specially declares them capable of exercising. Civ. Code of Louis. art. 25.
>
> 5. They are also sometimes divided into free persons and slaves. Freemen are those who have preserved their natural liberty, that is to say, who have the right of doing what is not forbidden by the law. A slave is one who is in the power of a master to whom he belongs. Slaves are sometimes ranked not with persons but things. But sometimes they are considered as persons for example, a negro is in contemplation of law a person, so as to be capable of committing a riot in conjunction with white men. 1 Bay, 358. Vide Man.
>
> 6. Persons are also divided into citizens, (q. v.) and aliens, (q. v.) when viewed with regard to their political rights. When they are considered in relation to their civil rights, they are living or civilly dead; vide Civil Death; outlaws; and infamous persons.
>
> 7. Persons are divided into legitimates and bastards, when examined as to their rights by birth.
>
> 8. When viewed in their domestic relations, they are divided into parents and children; husbands and wives; guardians and wards; and masters and servants son, as it is understood in law, see 1 Toull. n. 168; 1 Bouv. Inst. n. 1890, note.

66 I have taken the trouble of quoting from the email extensively. That is because in my view, it is appropriate to illustrate that Mr Matic's communications include matters that are not merely irrational. The references to women and 'a negro' are grossly offensive. It is appropriate and indeed important that sentiments of that nature are

identified and characterised for what they are: menacing, pernicious and abhorrent.

67 Mr Matic cites in his email various legal dictionaries. Upon the court's own investigation, it is apparent that the passages under the heading 'PERSON', including the references to women and 'negros', came from a website entitled 'The Free Dictionary'. The passages cited by Mr Matic are contained in the fourth listed definition of the word 'person' and have been attributed to a text entitled '[a] law dictionary, adapted to the Constitution and laws of the United States of America, and of the several states of the American union published in 1856'. An inference can be drawn that Mr Matic consciously selected this definition in preference to other perhaps more conventional definitions.

68 A short time later, Mr Matic sent a further email to my chambers in the following terms:

> **Can you please clarify who or what is restrained by the temporary injunction?**
>
> a. Me, Sandi the living breathing man and natural person
>
> or
>
> …
>
> c. legally generated juridical person as defined below?

69 In response to those emails, Mr Matic was advised by an email from the court that the orders speak for themselves and there was nothing further to add.

70 On 1 April 2022, Mr Matic emailed the chambers of the Chief Justice in the following terms:

> Without Prejudice, All rights reserved
>
> Dear The Hon Chief Justice Peter Damien Quinlan,
>
> It is with regret that I am emailing you regarding this matter but I simply feel I have no other avenue of getting my concerns answered or addressed instead of being discriminated against by the Supreme Court of Western Australia due to being self-represented given that I am in Financial hardship due to the Plaintiff 1 and Plaintiff 2 in this matter.
>
> If such simple questions can't be answered this matter needs to be dismissed.

I plead to you to advise the following:

Q: Is Justice Solomon administering my trust without my consent multiple times during these proceedings?

Failing to address these questions for a third time and refusing to clarify is compromising the judicial role by not addressing questions which are rather straightforward and look more like an email sent by the Plaintiff's lawyer and not the Associates of a Supreme Court Justice.

Twice I asked clarification regarding the injunction and whom or what is restrained by it. Mon 14/03/2022 1:53 PM & Mon 14/03/2022 2:25 PM.

This is third time I am seeking clarity from the court.

I request that Justice Solomon advise in writing and clarify & to condemn these statements made by the associate of justice Solomon on 14 March 2022.

'As to your question about the interim injunction, the court wishes to reiterate that the orders speak for themselves, and that there is nothing further to express.'

Clearly to someone like myself who isn't qualified in legal proceedings and legal terminology is unclear on the matter & I would think the Supreme Court of Western Australia would respond with a factual answer instead of being condescending and offensive towards me in order to avoid addressing the question.

Q: Justice Solomon, please advise:

Who or what is restrained by the temporary injunction?

1. During previous mention hearings where I dialled in via telephone, Justice Solomon advised that Natural Person and legal person or juridical person is all the same.

    - Please advise if I heard this correctly?

    - In the view of the Supreme Court of Western Australia/Justice Solomon, is a "Natural Person" the same as "juridical person" or "Legal Person"

2. Secondly, can you please clarify who or what is restrained by the temporary injunction?[26]

    a. Me, Sandi the living breathing man and natural person

[26] The formatting and colours have been lifted from the original email.

or

b. legally generated juridical person as defined below?

https://thelawdictionary.org/natural-person/

What is NATURAL PERSON

A human being, naturally born, versus a legally generated juridical person

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Entity, as a firm, that is not a single natural person, as a human being, authorized by law with duties and rights, recognized as a legal authority having a distinct identity, a legal personality. Also known as artificial person, juridical entity, juristic person, or legal person. Also refer to body corporate.

What is ARTIFICIAL PERSON

A nonhuman entity that is created by law and is legally different owning its own rights and duties. AKA jusistic person and legal person. Refer to body corporate.

What is PERSON

A man considered according to the rank he holds in society, with all the rights to which the place he holds entitles him, and the duties which it imposes. 1 Bouv. Inst. no. 137. A human being considered as capable of having rights and of being charged with duties; while a "thing" is the object over which rights may be exercised.

PERSON

This word is applied to men, women and children, who are called natural persons. In law, man and person are not exactly-synonymous terms. Any human being is a man, whether he be a member of society or not, whatever may be the rank he holds, or whatever may be his age, sex, &c. A person is a man considered according to the rank he holds in society, with all the rights to which the place he holds entitles him, and the duties which it imposes.

1. Bouv. Inst. n. 137.

2.. It is also used to denote a corporation which is an artificial person. 1 Bl. Com. 123; 4 Bing. 669; C. 33 Eng. C. L R. 488; Wooddes. Lect. 116; Bac. Us. 57; 1 Mod. 164.

> 3. But when the word "Persons" is spoken of in legislative acts, natural persons will be intended, unless something appear in the context to show that it applies to artificial persons. 1 Scam. R. 178.
>
> 4. Natural persons are divided into males, or men; and females or women. Men are capable of all kinds of engagements and functions, unless by reasons applying to particular individuals. Women cannot be appointed to any public office, nor perform any civil functions, except those which the law specially declares them capable of exercising. Civ. Code of Louis. art. 25.
>
> 5. They are also sometimes divided into free persons and slaves. Freemen are those who have preserved their natural liberty, that is to say, who have the right of doing what is not forbidden by the law. A slave is one who is in the power of a master to whom he belongs. Slaves are sometimes ranked not with persons but things. But sometimes they are considered as persons for example, a negro is in contemplation of law a person, so as to be capable of committing a riot in conjunction with white men. 1 Bay, 358. Vide Man.
>
> 6. Persons are also divided into citizens, (q. v.) and aliens, (q. v.) when viewed with regard to their political rights. When they are considered in relation to their civil rights, they are living or civilly dead; vide Civil Death; outlaws; and infamous persons.
>
> 7. Persons are divided into legitimates and bastards, when examined as to their rights by birth.
>
> 8. When viewed in their domestic relations, they are divided into parents and children; hushands and wives; guardians and wards; and masters and servants son, as it is understood in law, see 1 Toull. n. 168; 1 Bouv. Inst. n. 1890, note.

71 I have set out that email in full, without correcting for typographical errors, for the same reason that I have quoted extensively from other emails of Mr Matic. It is noteworthy that in his email to the chambers of the Chief Justice, Mr Matic repeated the same abhorrent comments about women and 'negros'.

72 On 5 April 2022, Mr Matic again emailed my chambers and the chambers of the Chief Justice. In a lengthy email, Mr Matic raised a number of complaints including an allegation that the plaintiffs' lawyers submitted evidence which they knew to be false. The email also alleged that I, as the judicial officer 'is incompetent and/or compromised in his role'.

73 Mr Matic copied that email to a journalist at the West Australian newspaper. Within the hour, the court was copied into an email from the plaintiffs' lawyers to Mr Matic, asking him to explain why the journalist had been copied. Mr Matic copied the court into his reply shortly thereafter, advising that 'this was done in error while selecting recipients from address book (sic)'.

74 The chambers of the Chief Justice responded briefly to Mr Matic on 5 April 2022. The email included advice conveyed from the Chief Justice that it was clear from the terms of the order of 11 February 2022 that the defendant restrained by the Order 'is you'. Included in that response was the advice that '[n]o further email correspondence will be entered into in relation to this matter'.

75 Undeterred, on 7 April 2022, Mr Matic sent a further email to the chambers of the Chief Justice, copied to my chambers, in the following terms:

> Without Prejudice, All Rights Reserved.
>
> Dear Associate,
>
> 1. My name is Sandi Matic, son of Pavao and Sabina and I am the Beneficiary of the SANDI MATIC Trust and Estate, MATIC, SANDI which is the same as my name but in all CAPITAL LETTERS, I do not consent to contract or joinder and I waive all benefits.
>
> 2. Are you administering my trust without my consent?
>
> 3. Are you trying to enforce an act or statute against a non consenting living man, because that is a crime?
>
> 4. The injunction was granted ex-parte against a non consenting living man, has a crime been committed against me?
>
> I would appreciate that you reply to the email trail where I am actually asking the question so it is continuous instead of a new email with no relevance.
>
> Regarding your responses, I can't seem to find the definition of the term 'you' in the Black's Law Dictionary. Is there another Legal dictionary I should look at for procedural purposes?
>
> I'll ask one more time, and respond appropriately as I don't see the term 'you' anywhere on the injunction nor can find a legal meaning for it.

> To assist with answering this, I have attached my Record of Live Birth and an affidavit which was submitted to Supreme Court on 3rd March 2022 & 14 March 2022 to
>
> Q: Justice Solomon, please advise:
>
> Who or what is restrained by the temporary injunction?
>
> 3. During previous mention hearings where I dialled in via telephone, Justice Solomon advised that Natural Person and legal person or juridical person is all the same.
>
> - Please advise if I heard this correctly?
> - In the view of the Supreme Court of Western Australia/Justice Solomon, is a 'Natural Person' the same as 'juridical person' or 'Legal Person'.
>
> 4. Secondly, can you please clarify who or what is restrained by the temporary injunction?[27]
>
> a. Me, Sandi the living breathing man and natural person
>
> or
>
> …
>
> d. legally generated juridical person as defined below?

76 Mr Matic attached to that email his first affidavit, the content of which I have set out in [58] above, and his record of birth.

77 The position adopted by Mr Matic in his communications to the court has been maintained. As recently as the day of the publication of these reasons, the court asked the parties to confirm their availability for delivery of the judgment with the straightforward question 'Can the parties please advise whether they intend to appear in person?'. At 11.56 am Mr Matic responded from his email address saying 'Yes'. At 12.20 pm Mr Matic responded from the same email address 'Sent in error, Sandi will respond shortly'. At 1.08 pm Mr Matic sent another response saying:

> Dear Associate
>
> I Sandi will attend in flesh on behalf of the defendant.
>
> Regards

[27] The formatting and colours have been lifted from the original email.

78 Somewhat unusually, I have set out these communications in detail. They are of some importance to the exercise of the court's discretion because they illustrate Mr Matic's capacity and unbridled disposition to level extravagant allegations against virtually everyone involved in this proceeding. Before the court, Mr Matic has been quite unrestrained in casting serious aspersions against a range of people whose conduct does not find favour with him. He appears quite prepared to make confident assertions to a wide audience, including serious allegations in sweeping terms, unconstrained by circumspection or caution.

Affidavit Evidence

79 The affidavit evidence provided by the parties in respect of the two applications is set out below.

(a) Plaintiffs:

(i) Affidavit of Jessica Louise Border affirmed 14 February 2022;

(ii) Second affidavit of Jessica Louise Border affirmed 21 February 2022;

(iii) Third affidavit of Jessica Louise Border affirmed 22 March 2022;

(iv) Fourth affidavit of Jessica Louise Border affirmed 30 March 2022;

(v) Fifth affidavit of Jessica Louise Border affirmed 8 April 2022;

(vi) Sixth affidavit of Jessica Louise Border affirmed 12 April 2022;

(vii) Affidavit of Angus Jonathon Bruce Mead sworn 18 February 2022;

(viii) Second affidavit of Angus Jonathon Bruce Mead sworn 28 March 2022;

(ix) Affidavit of Vivien Jit Sien Yap sworn 10 February 2022; and

(x) Second affidavit of Vivien Jit Sien Yap sworn 25 March 2022.

(b) Defendant:

(i) First affidavit of Sandi, son of Pavao and Sabina, affirmed 2 March 2022;

(ii) Second affidavit of Sandi Matic affirmed 2 March 2022;[28]

(iii) Third affidavit of Sandi, son of Pavao and Sabina, affirmed 8 April 2022;

(iv) Fourth affidavit of Sandi Matic affirmed 13 April 2022;

(v) Fifth affidavit of Sandi Matic affirmed 13 April 2022;

(vi) Sixth affidavit of Sandi Matic affirmed 13 April 2022;

(vii) Seventh affidavit of Sandi Matic affirmed 13 April 2022;

(viii) Eighth affidavit of Sandi Matic affirmed 13 April 2022; and

(ix) Ninth affidavit of Sandi Matic affirmed 13 April 2022.

80 Other than the affidavit of Ms Fitzgerald, all of the affidavits filed by the plaintiffs after 22 March 2022 are provided to support both the application for injunctive relief (the Injunction Application), and the application for committal of the defendant for contempt of court (the Contempt Application). The affidavit of Ms Fitzgerald concerned only the Contempt Application. Other than the ninth affidavit of Sandi Matic, the affidavits filed by the defendant appear to be entirely directed at the Injunction Application.

81 Mr Matic's third affidavit, provided to the court on 8 April 2022, was unsworn. Mr Matic's fourth to seventh affidavits were provided to the court at 7.22 pm the night before the hearing of 12 April 2022. They were not sworn or affirmed. At that hearing, I granted Mr Matic leave to have his affidavits affirmed or sworn in the proper form and to file the affidavits with the court, subject to an objection from counsel

[28] The first and second affidavits were not labelled as such when filed, but have been numbered for the sake of convenience in this judgment.

for the plaintiffs on the basis that large portions of the affidavits were 'argument and submission and not evidence of fact'.[29]

82 At 3.51 pm on 13 April 2022, Mr Matic provided to my chambers and to the plaintiffs his third to seventh affidavits, properly sworn. He also provided eighth and ninth affidavits, which had not been before the court at the hearing of 12 April 2022.

83 The eighth and ninth affidavits of Mr Matic provide the only sworn evidence in defence of the plaintiffs' contempt application. I have received these subject to the qualification I have referred to at the end of [80] above and shall deal with their contents later in this judgment.

The Injunction Application

84 As outlined above, the plaintiffs' Injunction Application is based on threats allegedly made by Mr Matic, the substance of which is contained in three phone calls; the phone call of 31 January 2022, the phone call of 1 February 2022, and the phone call of 8 February 2022.

85 I have distilled the relevant evidence relating to each of those phone calls.

The Phone Call of 31 January 2022

86 Mr Matic provided a transcript of this phone call, which he prepared himself, annexed to the Second Affidavit of Sandi Matic.[30] That transcript contained the following passages:

> Angus Mead [00:00: 18] Hello, Angus speaking.
>
> Sandi Matic [00:00:20] Angus, Sandi here from Perth. Angus Mead [00:00:22] Hey, how are you Sandi?
>
> Sandi Matic [00:00:24] Yeah, I'm alright.
>
> Angus Mead [00:00:24] That's good. Thank you for uhmm giving me a call today I know texting uhmm, over the weekend. And I've been speaking a lot with uhmm Lee Fitzgerald and Vivian Gap from Ray White Dalkeith.
>
> Sandi Matic [00:00:38] Yep.

[29] ts 12 April 2022, 111.
[30] Second Affidavit of Sandi Matic (affirmed 2 March 2022) [SM-1].

> Angus Mead [00:00:38] Uhmm Just with regards to some of some of the issues uhmm, that you've been having within the office uhmm ...
>
> Sandi Matic [00:00:46] Major issues, yes.
>
> Angus Mead [00:00:47] Yeah. I.. I sort of know that you were quite uhmm unsatisfied with uhmm, I guess, the.. the service that you received from Ray White Dalkeith, and that's why I guess I wanted to just give you a call and, and just sort of touch base with you ..
>
> Sandi Matic [00:01 :00] Well..we .. Where are you? What's your actual, what's your actual role? What are you actually calling about?
>
> Angus Mead [00:0 I :06] Yes. So I look after all the, the complaints in the group. So I'm the national relationship manager, for the Ray White Group uhmm based in Sydney, uhmm and I report directly to the White family uhmm and, and look after sort of any issues that I guess any of our customers still struggle about uhmm or sort of we, we have a ..
>
> Sandi Matic [00:01 :26] Okay. Well essentially, Vivian and her strategy or, or the lack of and blatantly gone against what was actually signed in the contract, which is to have a property listed in high one millions and then under quoting it to hundreds of people that actually enquired. Telling them it's at mid one millions, and then the ongoing back and forth on the WhatsApp arguing, **essentially cost me on like my marriage and my whole life. So whatever profits left from this house, when, if it does get sold to this buyer, I'm going put it into advertising to essentially just, ju.. just this will just be absolutely everywhere, in Perth. So I'm going to spend all the money I've got on fucking advertising and getting this printed on every single newspaper, community newspaper, all the home opens throughout the whole of western suburbs, there'll be billboards.** Now, if she sent you the actual email I sent through to them saying.

87 I have highlighted a section of the transcript. I have done that because it is the section most relevant to the application advanced by the plaintiffs.

88 The transcript also recorded that Mr Matic was invited by Mr Mead to identify what recompense, if any, he was seeking. Among other things, Mr Matic then said:

> I'll be going to either the District Court or Supreme Court, uhh when this money comes in. I've got money for legal fees, which has cost me my marriage, right? Cost me access to my kid. So I will spend every single last cent trying to chase for what I actually and rightfully, I believe I've owed. And then it's basically the price replacement value of the house, as quoted by her builders that have come through the house, minus the cost to fix whatever cosmetic issues they have, which

> was twenty to fifty K, absolute maximum. Plus the value of the house. The difference between that and what she's actually made us take this offer for knowing that we were having marital troubles, uhh two young kids and wanted to get it done as soon as possible.
>
> Angus Mead [00:06:29] Do.. do you roughly have a figure just to sort of..
>
> Sandi Matic [00:06:32] You can, you, you can work it out.
>
> Angus Mead [00:06:35] Uhh oh okay, Uhmm I guess. Is.. is there a figure that you did have in mind? I just, I just didn't want to write these things down, just so that when I go back to..
>
> Sandi Matic [00:06:42] Well, they're her builders. So get information from her, to.. to tell you to build a house, in the current market plus value of the land, minus the cosmetic issues to fix up.
>
> Angus Mead [00:06:55] Right..
>
> Sandi Matic [00:06:56] So two million plus seven hundred and fifty K, minus fifty K.
>
> Angus Mead [00:07:0 I] You say, two million plus seven hundred and fifty K, seven, seventy hundred K minus fifty K, If you say?
>
> Sandi Matic [00:07:08] Something like, along those lines. One of the first builders that came through uhh said two million. Second one said one and a half to two million, depending on uhh the time of this building..
>
> Angus Mead [00:07:17] So, you're after uhh the two million dollars compensation, in this..
>
> Sandi Matic [00:07:20] No, no The difference between that and what she's actually made us take. And uhh this is not like I'm saying I'm giving you an ultimatum, I'm just telling you what I'll be seeking in court. With this first court..

89 I pause to observe that there is an important difference between the part of the conversation I have set out at [86] and the part I have set out at [88]. In [88], Mr Matic refers to the depth of his loss and threatens to sue in the District Court or the Supreme Court to recover all of that loss. The plaintiffs do not complain about that threat. The plaintiffs are correct not to do so. People are quite entitled to put their complaints vociferously to the person or entity they believe has wronged them, and to threaten to utilise the court processes to recover their financial loss.

90 The plaintiffs' complaints relate to the threat in the passage I have set out in [86].

91 The Second Affidavit of Mr Mead, in part, served to respond to this transcript. Mr Mead suggested that the transcript was 'generally consistent with [his] recollection' of the conversation, but that 'some matters have been omitted or edited'. These alterations, according to Mr Mead, included the removal of profanity used by Mr Matic and the removal of statements such as the threat to 'make Vivien feel the pain I am feeling'. The effect of these alterations, Mr Mead's suggested, was to reduce the aggression and hostility he perceived in Mr Matic's tone during the conversation.[31]

92 By consent of the plaintiffs and the court, Mr Matic provided a recording of the phone call of 31 January 2022 via email on 8 April 2022. At the hearing of 12 April 2022, counsel for the plaintiffs accepted that the transcript annexed to the Second Affidavit of Mr Matic was an accurate transcript of the conversation.

93 Having listened to the recording, it cannot be said that the highlighted section was communicated with any particular hostility over and above the rest of the conversation. I did not consider that, objectively, the tone of Mr Matic in the conversation was unduly aggressive.

94 In respect of the conversation of 31 January 2022 the following may be observed:

(a) the conversation was recorded by Mr Matic and accurately transcribed and annexed to his affidavit of 2 March 2022;

(b) Mr Mead's recollection of the conversation is not accurate in a number of respects. His assertion that the transcript has been altered, or parts omitted, appears to be wrong; and

(c) Mr Mead's summary note of the conversation is not entirely accurate. The conversation did not appear to have included statements by Mr Mead that 'I am going to make her pay' or 'feel the pain I currently feel'. Other aspects of the summary appear to be accurate, including the threat to put up billboards and that Ms Yap is the cause of Mr Matic losing his family. Mr Mead's characterisation of Mr Matic as having been

[31] Second Affidavit of Angus Jonathan Bruce Mead (sworn 28 March 2022) [5] - [9].

> 'extremely aggressive' throughout the call is not in my view an objectively fair characterisation of the tone and content of Mr Matic's conduct throughout the call.

95 Mr Matic argued that the inconsistencies between Mr Mead's sworn recollection and the transcript demonstrate that Mr Mead's evidence was deliberately false. At this stage of the proceeding, I am in no position to make any such finding. It is entirely possible that as Mr Mead wrote his summary on 3 February 2022, he had conflated his conversations of 31 January and 1 February 2022. That conflation may also have affected Mr Mead's recollection of Mr Matic's tone and level of hostility during the call of 31 January 2022. They are matters for trial.

96 Mr Matic also alleges that Mr Mead's evidence was knowingly false because Mr Mead knew there was a recording of the conversation.[32] That allegation was based on the transcript of the conversation, which records that Mr Matic said to Mr Mead in the context of explaining his dealings with Ms Yap, 'we were actually responding to a different offer at the time. I mean, uhh-uhh just, just to give you, I guess, uhh a courtesy - my phone records, every single conversation I make about, by default automatically. So I've got all these like, arguments saved on the phone with her...'.[33] Again, I am in no position to make a finding as to whether Mr Mead, when he swore his affidavit, was consciously aware that Mr Matic had in fact recorded their conversation, and in any event I do not consider that the transcript of itself provides a basis for that conclusion. Indeed, it may be observed that Mr Matic's comments appear to be directed to his prior conversations with Ms Yap, not the conversation he was then having with Mr Mead. These are matters for trial.

97 Mr Matic went further and alleged that on the basis of that transcript, Mr Mead must have known that the conversation was recorded, and therefore his lawyers must also have known. It followed, according to Mr Matic, that the plaintiffs' lawyers knowingly advanced false evidence. It is important that I observe that such an allegation has no foundation. It is extravagant and its assertion reflects adversely on Mr Matic and suggests that he is quite prepared to advance serious but unsubstantiated allegations.

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[32] ts 12 April 2022, 96.
[33] Second Affidavit of Sandi Matic (sworn 2 March 2022) [SM-1].

98 It should be observed that the transcript and recording, both provided by Mr Matic, did contain the threats to advertise and erect billboards as I have highlighted above. They also contained assertions by Mr Matic that Ms Yap was responsible for the breakdown in his marriage and for the loss of his 'whole life'. I observe that these undisputed statements contradict Mr Matic's assertions made at the hearing of 14 February 2022 that 'none of those things that [Mr Mead] noted in the letter that were sent to Mrs Yap were ever, ever said'.[34]

99 When I put these comments, highlighted at [87], to Mr Matic at the hearing of 12 April 2022, he said that the words did not amount to a threat. At one point Mr Matic said this was because the words were 'said in jest' and 'some throw-away comments are not threats'.[35] When I responded to Mr Matic by seeking to confirm his submission that I should understand that the words were said in jest, Mr Matic replied by saying he 'may have to look up what jest means'.[36]

100 Mr Matic then explained that the words were not said 'in a manner intending to carry out the actions'.[37] Mr Matic also said that if he were to say publicly the things he was threatening to say, it would be in the public interest and he would be within his rights to do so.[38]

101 At another point Mr Matic sought to justify his conduct by apparently accepting the evidence of 'billboards, advertising' but denying there were threats because he had not made 'threats of physical harm or pain'.[39] Mr Matic's consistent position was that he had 'never made any threats at all'.[40]

102 I am satisfied that these comments did amount to a threat to publicly denigrate and make adverse and prejudicial comments about the plaintiffs.

The Phone Call of 1 February 2022

103 The letter from Mr Mead to Ms Yap dated 1 February 2022 and annexed to Ms Yap's first affidavit alleged that in the course of this phone call, Mr Matic made statements such as 'I am going to make

[34] ts 14 February 2022, 7.
[35] ts 12 April 2022, 131.
[36] ts 12 April 2022, 131.
[37] ts 12 April 2022, 131.
[38] ts 12 April 2022, 132.
[39] ts 12 April 2022, 136.
[40] ts 12 Aprils 2022, 133.

Vivien feel the pain I am feeling' and 'I am going to follow Vivien around to every home open she attends'.[41]

104 In his second affidavit of 2 March 2022, Mr Matic provided the following evidence:

> I called Angus again on 1st February in an attempt to get an update.
>
> The call I made to him was at 2:37PM WA Time.
>
> The call only lasted 19 seconds as phone rang out and went to voicemail. Nothing offensive nor threatening was left on Mr Mead's voicemail.
>
> All my correspondences with Ms Yap, Ms Fitzgerald & Mr Mead have been firm but respectful and never threatening in any shape or form.
>
> I attach my Telstra Mobile phone bill which shows these dates/times & marked **SM-2** is a true copy of extracted pages relating to 31 Jan 2022 - 1 Feb 2022 from February 2022 Telstra Mobile phone bill Pages 1, 2, 42, 43 for service number 0448800250 for Sandi Matic.

105 The Second Affidavit of Mr Mead responded to Mr Matic's evidence as follows:

> I did receive a missed call and converted voicemail-to-text message from Mr Matic on 1 February 2022.
>
> At approximately 5:38pm on 1 February 2022 I called Mr Matic on phone number 0448 800 250. The call lasted just over four minutes. I attach and mark 'AJBM-1' a true copy of an extract of my mobile phone bill for the period of 8 January 2022 to 7 February 2022. My call with Mr Matic appears on the page labelled '850 or 906' of AJBM-1.
>
> During our 1 February 2022 conversation, Mr Matic made statements to me that I recorded in a file note. The file note is attached to my first affidavit sworn on 18 February 2022 as a 'AJBM-2'

106 It is noteworthy that Mr Matic in his affidavit did not mention this subsequent conversation of over four minutes with Mr Mead on the same day. From the bar table, Mr Matic accepted that the conversation took place.[42] It was put by counsel for the plaintiffs, and by me directly to Mr Matic, that an adverse inference might be drawn from his failure to refer to that conversation in his affidavit. I did not find Mr Matic's response to be an adequate explanation as to why he made no mention of that conversation.

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[41] Affidavit of Vivien Jit Sien Yap (sworn 10 February 2022), 36 [VJSY-4].
[42] ts 12 April 2022, 121.

The Phone Call of 8 February 2022

107 Mr Mead recorded the conversation and annexed a transcript to his affidavit of 8 February 2022, which contained the following salient exchange:

> **Angus Mead:** But I guess the reason why this process has been dragged out was following up from our phone call last time, you did say some things to me, which were quite concerning around Vivien's safety that you were going to be following her around…
>
> **Sandi Matic:** I didn't do anything like that I've got no idea what you're talking about.
>
> **Angus Mead:** Sandi, I'm just going off what our call was last time.
>
> **Sandi Matic:** No, there's nothing about that was mentioned so I've got no idea what you're actually trying to get at.
>
> **Angus Mead:** Ok, well I don't think that that's correct. Um, I do remember quite clearly some of the things that you did say last time around…
>
> **Sandi Matic:** …[indistinct] quite clearly, because I've got the conversation recorded as well so let's just…
>
> **Angus Mead:** Would you mind sending me a copy of that conversation? Would that be okay, Sandi?
>
> **Sandi Matic:** I do mind, I'm not going to send it to you, how about you tell me exactly what I said, because you said you made it very clearly.
>
> **Angus Mead:** Yep, so you said to me last time that you would be driving around to all of Vivien's open home in your ute with signs that you were going to make, um, letting everyone know what she had done. You then also mentioned to me that you were going to be getting billboards put up letting everyone know sort of how unsatisfactory you were with Vivien Yap. You were going to be driving around to the open homes first because you didn't yet have the funds to do the billboards and that was in a conversation that we had last time and, if you've got that recording, then I'd love to get a copy of that just so we're both aware of what was said.
>
> **Sandi Matic:** There's, you've lost your mind.
>
> **Angus Mead:** I don't think I've lost my mind, Sandi.

108 Mr Matic did not accept the transcript to be accurate, on the basis that 'there is no verifiable way to prove that it hasn't be altered'.[43] When I attempted to clarify Mr Matic's position, he reiterated that the recording 'has been doctored', and that I should not rely on Mr Mead's transcript because Mr Mead had not signed every page of the annexures to the relevant affidavit.[44] However, Mr Matic did not advance any evidence to suggest it was inaccurate.

109 It is apparent from Mr Mead's transcript that Mr Matic immediately denied he had made the threats as Mr Mead alleged. It is difficult to reconcile that emphatic denial with Mr Matic's own recording and transcript of his conversation with Mr Mead on 31 January.

Legal Principles - Injunctions

110 The plaintiffs seek interlocutory injunctive relief in the form of the maintenance of the interim orders I made on 11 February 2022. The applicable principles are not controversial. They have been explained by the High Court and adopted by this court in numerous cases:

> On such applications the court addresses itself to two main inquiries. The first is whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is, there is a probability that at the trial of the action the plaintiff will be held entitled to relief. The second inquiry is whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted.
>
> The phrase 'prima facie case', does not mean that the plaintiff must show that it is more probable than not that at trial the plaintiff will succeed; it is sufficient that the plaintiff show a sufficient likelihood of success to justify in the circumstances the preservation of the status quo pending the trial.[45]

111 In this court, the applicable principles were summarised by Beech J in ***Twinside Pty Ltd v Venetian Nominees Pty Ltd*** and need not be repeated.[46]

112 As to the prima facie case, at this stage of the proceedings it is generally neither appropriate, nor possible for the court to make

[43] ts 12 April 2022, 124.
[44] ts 12 April 2022, 124 - 125.
[45] ***Beecham Group Ltd v Bristol Laboratories Pty Ltd*** [1968] HCA 1; (1968) 118 CLR 618 cited in ***Australian Broadcasting Corporation v O'Neill*** [2006] HCA 46; (2006) 227 CLR 57 [65].
[46] ***Twinside Pty Ltd v Venetian Nominees Pty Ltd*** [2008] WASC 110 [7] - [12].

findings in relation to contested factual matters. The relevant task of the court is to determine whether the evidence before it raises a triable issue, that is, whether there is an issue, or are issues, that need to be determined by a trial.

113 Having considered the evidence and submissions before the court, I have concluded that there is, at least, a triable issue in relation to a number of relevant factual matters. In particular, the plaintiffs have established a prima facie case that Mr Matic has threatened to harm the plaintiffs' economic interests by making widespread public denunciations or adverse comments about the plaintiffs and by disrupting the plaintiffs' business activities such as home opens. Having concluded that the plaintiffs have established a triable issue in respect of the facts relating to Mr Matic's conduct and the potential impact on the plaintiffs' financial interests, it is necessary to consider whether those facts establish a triable cause of action.

114 The plaintiffs identified a number of causes of action that emanate from the threats alleged by Mr Mead. Before turning to a consideration of the causes of action, it is appropriate to observe that the plaintiffs plead in their statement of claim that Ms Yap has already suffered damage by reason of anxiety, stress and fear arising from Mr Matic's conduct.[47] It should be appreciated however that the injunctive relief sought by the plaintiffs is directed to threatened future, rather than historical conduct.

115 Injunctive relief will often relate to the restraint of future conduct so as to prevent the consequences that may flow from prior, allegedly unlawful conduct. The object of such interlocutory injunctive relief is to maintain the status quo while the dispute about the lawfulness of the prior conduct is resolved. An example is a threatened dealing with property alleged to have been unlawfully acquired.

116 Here, the conduct sought to be restrained is largely based not on the consequences of prior conduct alleged to be unlawful, but rather on threatened unlawful conduct that has not yet occurred.

Legal Principles - *Quia Timet* Injunctions

117 Injunctions of that nature are referred to as *quia timet* injunctions which prevent a threatened unlawful interference with the exercise of the plaintiff's rights prior to any actual interference. The words '*quia*

[47] Statement of Claim (30 March 2022) [34].

timet' mean simply 'since he fears'. Dr Spry in his well-known text *Equitable Remedies* explains:

> [O]ne of the main uses of injunctions is the prevention of prospective injuries, it is apparent that the mere futurity of unlawful acts can by no means be an objection to the jurisdiction of the court. So it was observed by Cotton L.J., 'The Court of Chancery said, "Where a man threatens and intends to do an unlawful act, we will, before it is done, grant an injunction to prevent his doing it, and we will grant it where the act has been done and is likely to be repeated" – the jurisdiction is simply preventive.' Indeed Jessel M.R. stated, 'No part of the jurisdiction of the old Court of Chancery was considered more valuable than that exercise of jurisdiction which prevented material injury being inflicted, and no subject was more frequently the cause of bills for injunction than the class of cases which were brought to restrain threatened injury as distinguished from injury which was already accomplished'.[48]

118 Professor Dal Pont in his *Equity and Trusts in Australia* explains:

> Quia Timet injunctions prevent a threatened unlawful interference with the exercise of the plaintiff's rights prior to any actual interference. They can be interlocutory or perpetual, prohibitory or mandatory. That a court here is asked to award an injunction prior to actual harm being suffered justifies a cautious approach. To this end, traditionally the courts have required the plaintiff to show a strong probability that what the defendant proposes to do will cause imminent and substantial damage to the plaintiff's property or business. The term 'imminent' here is used in the sense that 'the circumstances must be such that the remedy sought is nor premature', although this 'is not to be taken as conveying that it need not be shown to be likely at all'. Moreover, 'the degree of probability of future injury is not an absolute standard: what is to be aimed at is justice between the parties, having regard to all the relevant circumstances'. The reference to 'substantial damage' means 'real or of substance as distinct from ephemeral or nominal', it being appropriate to consider 'the size of the detriment which might be suffered by the plaintiff if [the injunction] were not granted'.[49]

119 In relation to express threats made by a defendant, Dr Spry comments:

> [W]hether or not a breach has already taken place at the time of the making of the proposed order, it is always necessary to take into account in the same way the precise probability that future breaches or infringements will take place. One of the most important indications of the defendant's intentions is ordinarily found in his own statements and

[48] Spry I C F, *Equitable Remedies* (9th ed, 2013) 390.
[49] Dal Pont G, *Equity and Trusts in Australia* (7th ed, 2019) [31.190].

> actions. So it may be of importance that he has actually threatened to perform the acts that the applicant seeks to prevent.[50]

120 It follows that my conclusions at [102] and [113] above regarding the threats made by Mr Matic, are particularly significant to a consideration of *quia timet* relief.

Legal Principles - Causes of Action

121 The nature of the relief sought by the plaintiffs raises a number of possible causes of action. In the course of their written and oral submissions over the course of the various hearings, the plaintiffs identified a number of causes of action that arguably arise from Mr Matic's alleged conduct. They included the torts of interference with business by unlawful means, interference with contractual relations, intimidation, injurious falsehood, and defamation.

122 The tort of interference with business by unlawful means is recognised in England but is an emerging tort in Australia. Its elements and applicability in Australia were considered in this court at some length by Pritchard J in ***Hardy Finance Corporation v Ahern [No 3]***.[51] While its applicability and scope have not been confirmed by the High Court,[52] the Queensland Court of Appeal observed more than 20 years ago that it has been judicially acknowledged in superior courts in Australia.[53] Pritchard J concluded in ***Hardy Finance Corporation v Ahern [No 3]*** that:

> Despite the force of the concerns to which I have referred above in relation to the recognition in Australia of the unlawful means tort, as explained in ***OBG***, I am persuaded that the unlawful means tort should now be accepted as part of the Australian common law.[54]

123 Most recently in ***Sheridan v Australian Pacific Airports (Melbourne)*** Gorton J was prepared to assume that the tort does exist in Australia.[55]

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[50] Spry I C F, *Equitable Remedies* (9th ed, 2013) 393.
[51] ***Hardy Finance Corporation v Ahern [No 3]*** [2010] WASC 403.
[52] ***Sanders v Snell*** [1998] HCA 64; [1998] 196 CLR 329 [30].
[53] ***Deepcliffe Pty Ltd v Council of the City of Gold Coast*** [2001] QCA 342 per McMurdo P at [21].
[54] ***Hardy Finance Corporation v Ahern [No 3]*** [720].
[55] ***Sheridan v Australian Pacific Airports (Melbourne)*** [2021] VSC 440 [120].

124 The Australian cases indicate that the relevant elements of the tort of wrongful interference with trade are as follows:

> (1) a wrongful interference with the actions of a third party in which the applicant has an economic interest;
>
> (2) an intention on the respondent's part thereby to cause loss to the applicant;
>
> (3) the acts of interference are actionable by the third party as an interference with its freedom to deal with the applicant; and
>
> (4) loss or damage suffered by the applicant.[56]

125 I have already found that there is a triable issue of fact in relation to Mr Matic's alleged threat to disrupt the plaintiffs' business activities, including by attendance at home opens. In particular, Mr Mead's sworn evidence is that Mr Matic said in a telephone conversation that 'I am going to follow Vivien around to every open home she attends'.[57] The transcript and recording of the conversation of 31 January 2022 provided by Mr Matic also record him mentioning 'all the home opens throughout the whole of (sic) western suburbs'.[58] Ms Yap in her second affidavit says that she has since employed a security guard to attend home opens with her on weekends.[59]

126 While the evidence did not extend to any detail of what Mr Matic threatened to do at the home opens, in context, it can be inferred that the alleged threat was to disrupt the home open in some manner that involved disparaging the plaintiffs. Putting aside the prospect of things being said by Mr Matic that may be false or defamatory, the plaintiffs submit that the attendance itself amounts to an unlawful trespass. That is because the license to attend a home open is not unlimited. It does not extend to attendance for the purposes allegedly threatened by Mr Matic. It follows according to the plaintiffs, that the disruption allegedly threatened by Mr Matic will be effected by unlawful means. The homeowner has a contractual relationship with the plaintiffs as agent for the sale of the owner's home and is a third party to the relationship between Mr Matic and the plaintiffs.

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[56] ***Canberra Data Centres Pty Ltd v Vibe Constructions (ACT) Pty Ltd*** (2010) 173 ACTR 33 as cited in ***Polar Aviation Pty Ltd v Civil Aviation Safety Authority (No 4)*** [2011] FCA 1126; (2011) 203 FCR 293 [97].
[57] Affidavit of Angus Jonathon Bruce Mead (sworn 18 February 2022) [AJBM-1].
[58] Affidavit of Sandi Matic (affirmed 2 March 2022) [SM-1].
[59] Second Affidavit of Vivien Jit Sien Yap (sworn 25 March 2022) [7.1].

127 I accept the submission of the plaintiffs that there is a triable issue as to whether Mr Matic's allegedly threatened conduct amounts to unlawful interference with the plaintiffs' trade by unlawful means. Mr Matic's conduct is arguably an interference with the actions of a third party, that is, the plaintiffs' clients, at least by the threatened disruption of home opens and quite possibly by other means intended to sabotage the relationship between the plaintiffs and their clients. That alleged threatened interference is arguably unlawful, either as a trespass or by defamation or injurious falsehood. The plaintiffs plainly have an economic interest in the relationship with their clients. If the evidence advanced on behalf of the plaintiffs is accepted, then it is likely that Mr Matic's intention will be found to be to cause loss to the applicants.

128 In the circumstances, I have concluded that the plaintiffs have established a triable issue as to whether Mr Matic's alleged threats amount to a threat to interfere unlawfully with the plaintiffs' business interests, at least by the alleged threat to attend every home open.

129 The plaintiffs further contend that a triable issue exists as to whether Mr Matic's conduct amounts to the tort of intimidation.

130 The tort of intimidation has not been litigated extensively in Australia.[60] However, there is agreement about the elements of the tort. The learned authors of *Balkin & Davis Law of Torts*, having distilled the common law regarding this cause of action, conclude that:

> There are three elements to this action: (1) that the defendant has made a demand, coupled with a threat, to either the plaintiff or a third party; (2) that the threat is to commit an unlawful act; and (3) that the person threatened complied with the demand, thereby causing loss to the plaintiff.[61]

131 The learned authors go further to clarify the position of the law in Australia, noting relevantly that:

> The defendant's demand, and concomitant threat, need not be directed to a third party, but may be made to the plaintiff personally. Although the issue has not been the subject of judicial comment in Australia, there are dicta both in England and New Zealand to that effect, and in an interlocutory appeal in ***Berezovsky v Abramovich***, no question was raised before the English Court of Appeal that the tort of intimidation

[60] Rolph et al, *Balkin & Davis Law of Torts* (6th ed, 2021) 742 (*Balkin & Davis Law of Torts*).
[61] *Balkin & Davis Law of Torts* 742.

> may be committed by the defendant making the necessary threat and demand to the plaintiff.[62]

132 As to the requirement that the plaintiffs demonstrate compliance with the threat and damages (i.e., the third element) Parker J in ***Patrick Stevedores Operations Pty Ltd v Maritime Union of Australia*** said:

> The plaintiffs also rely on the tort of intimidation which involves the coercion of a person by unlawful threats into doing, or abstaining from doing something which otherwise the person would have every right to do. For injunctive relief it is not necessary that the person threatened submitted to the coercion.[63]

133 I shall briefly explore whether, on the evidence before me, there is an arguable case that these elements are satisfied.

134 The plaintiffs allege that they were threatened by Mr Matic. Broadly, I consider that there have been two alleged categories of threats. The first category includes the evidence I have outlined above of Mr Mead's record of his phone calls with Mr Matic which was before the court at the granting of the interim injunction on 11 February 2022. On that evidence, Mr Matic did not explicitly couple these threats with a demand. Indeed, there is some evidence that Mr Matic told Mr Mead that 'there is nothing Vivien can offer me to make this right'.[64] Nevertheless, on the basis of the whole of the evidence available, it is arguable that these threats were made in the context of demanding compensation, or other forms of resolution from the plaintiffs in relation to the sale of Mr Matic's house.

135 The second category of threats is contained in the evidence that is the subject of the Contempt Application. I will discuss the detail of the evidence below. The substance of these threats was that Mr Matic asserted by and email to the plaintiffs' lawyers on 16 March 2022 that he intended to gather information about the plaintiff 'to demonstrate to the courts that this sort of illegal & criminal behaviour started long before Ms Yap and I crossed paths'.[65] Mr Matic also claimed he could procure and provide 'sworn affidavits from ex employee's (sic)'.

136 These threats were coupled with the demand that the plaintiffs 'get this ridiculous matter dropped'. That is, that unless the plaintiffs ceased their action against the defendant, the defendant would commence

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[62] *Balkin & Davis Law of Torts* 743.
[63] ***Patrick Stevedores Operations Pty Ltd v Maritime Union of Australia*** (1998) 82 IR 87, 98.
[64] Affidavit of Vivien Jit Sien Yap (sworn 10 February 2022) [VJSY-4].
[65] Third Affidavit of Jessica Louise Border (affirmed 22 March 2022) [JLB-2].

using various mechanisms to procure prejudicial information about Ms Yap, including information that was unrelated to Mr Matic's complaint about the sale of his home.

137 At the hearing of 12 April 2022, Mr Matic made submissions that the second category of threats were made in pursuit of a settlement agreement.[66] I reject this characterisation. The threatened conduct appears to have been intended to persuade the plaintiffs to drop this action so as to avoid the disclosure of prejudicial and embarrassing information unrelated to the complaint, not to reach a genuine compromise.

138 In explaining the notion of a threat, Lord Devlin in ***Rookes v Barnard*** observed:

> All that matters to the plaintiff is that, metaphorically speaking, a club has been used. It does not matter to the plaintiff what the club is made of – whether it is a physical club or an economic club, or tortious club or an otherwise illegal club.[67]

139 The defendant's language in respect of both categories of threats allegedly included statements that he was going to 'spend all the money I've got', 'spend every last cent trying to chase for what I actually ... believe I've (sic) owed'[68] and 'I will risk everything, I will lose everything'.[69] In my view, it is arguable that the defendant has made a series of threats against the plaintiffs, coupled with demands both for compensation and for the proceedings to be ended.

140 I now turn to whether the acts allegedly threatened by the defendant are arguably unlawful. The learned authors of *Balkin & David Law of Torts* explain in that regard:

> The threat issued by the defendant must be to commit an unlawful or illegal act. The plaintiff bears the onus of proof as to the unlawfulness of the act. Such an act might be a crime, or another tort.[70]

141 As I have noted, the plaintiffs readily accept that Mr Matic is entitled to advance his complaints against the plaintiffs through the appropriate regulatory authorities and through legal proceedings. However, the plaintiffs argue that Mr Matic's alleged threats go well

[66] ts 12 April 2022, 94.
[67] ***Rookes v Barnard*** [1964] AC 1129, 1209.
[68] Affidavit of Sandi Matic (affirmed 2 March 2022) [SM-1].
[69] Third affidavit Jess Border (affirmed 22 March 2022) [JLB-2].
[70] *Balkin & Davis Law of Torts* 744.

beyond the concerns that relate to his complaints about the sale of his home. The plaintiffs contend that assessed as a whole, the alleged threats amount to a threat to defame or to promulgate falsehoods in a manner that is injurious to the plaintiffs. I accept that there is a triable issue as to whether Mr Matic's conduct might be so characterised.

142 I have therefore concluded that the plaintiffs have established a triable issue as to whether the conduct of Mr Matic constituted a threat to engage in the tort of intimidation.

143 The plaintiffs also submit that a triable issue arises as to whether Mr Matic's conduct amounts to the tort of interference with contractual relations. There is no evidence that Mr Matic's alleged threats or conduct caused any breach of contract to which either of the plaintiffs were a party or that Mr Matic had threatened to induce such a breach. However, the alleged threatened conduct of Mr Matic may arguably hinder the capacity of the plaintiffs to perform their obligations to their clients, such as in the conduct of home opens.

144 The tort of interference with contractual relations remains in some respects an emerging and developing cause of action. The tort was considered at some length in this court in the context of an application for interlocutory injunctive relief by Martin J in ***Ooranya Pty Ltd v ISPT Pty Ltd***[71] where his Honour discussed a number of the authorities, including the decision of Beach J in ***Donaldson v Natural Springs Australia Ltd*** who set out the elements of the tort as follows:

> First, there must be a contract. Second, the defendant must know that such a contract exists. Third, the defendant must know that if one of the contracting parties does or fails to do a particular act, that conduct would be a breach of the contract. Fourth, the defendant must intend to induce or procure that contracting party to breach the contract by doing or failing to do that particular act. Fifth, the breach must cause loss or damage to the plaintiff. Sixth, no defence of justification should be applicable.[72]

145 Importantly at [62] Martin J, adopting the position of Beach J at [210] of ***Donaldson v Natural Springs Australia Ltd*** concluded that liability for interference with a contract may arise in the absence of an actual breach of contract so long as the tortfeasor nevertheless hindered or prevented the performance of the contract. Thus, if Mr Matic's allegedly threatened conduct hinders the plaintiffs' performance of their

[71] ***Ooranya Pty Ltd v ISPT Pty Ltd*** [2018] WASC 256.
[72] ***Donaldson v Natural Springs Australia Ltd*** [2015] FCA 498 [206]

contractual obligations to their vendor clients, the tort may be established.

146 The alleged threats of Mr Matic arguably extend to conduct that may hinder the capacity of the plaintiffs to perform contractual obligations to their clients such as the conduct of home opens. In my view there is therefore a triable issue as to whether the alleged threatened conduct would amount to the tort of interference with the plaintiffs' contractual relations with their clients.

147 The plaintiffs also contend that on the basis of the alleged conduct, a triable issue arises as to whether there is a threat to commit the tort of injurious falsehood. The learned authors of *Balkin & Davis Law of Torts* explain that the tort has four elements: (1) a false statement of or concerning the plaintiff's goods or business; (2) publication of that statement by the defendant to a third person; (3) malice on the part of the defendant - that is, that the statement was made mala fide or with a lack of good faith; and (4) proof by the plaintiff of a particular and identifiable loss which was either intended by the defendant, or is the natural and probable consequence of the making of the statement.[73]

148 The plaintiffs contend that the matters asserted by Mr Matic and that he threatens to promulgate, are untrue, and are likely to cause significant economic loss. On the basis of the evidence available to me, I am satisfied that a triable issue arises in relation to whether Mr Matic's conduct amounts to a threat to commit the tort of injurious falsehood.

149 For essentially the same reasons, I am persuaded that a triable issue arises as to whether Mr Matic's alleged conduct amounts to a threat to defame. In that regard I am mindful of the special caution that should be exercised in granting an interlocutory injunction to restrain an alleged defamation given the public interest in free speech; see ***Fu v Winstar Group Pty Ltd***.[74]

150 However, in my view, the conduct of Mr Matic arguably has the flavour of a vendetta against the plaintiff such that in the absence of a court order, the alleged threats may well be repeated or fulfilled. In the circumstances, an interlocutory restraint may be justified.[75]

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[73] *Balkin & Davis Law of Torts* 793.
[74] ***Fu v Winstar Group Pty Ltd*** [2014] WASC 496 [12].
[75] ***Graham v Powell (No 4)*** [2014] NSWSC 1319 [45]; ***RSPCA NSW v Davies*** [2011] NSWSC 1445 [67] - [77]; ***Agustin-Bunch v Smith*** [2021] VSC 158 [95].

151 For the reasons I have explained above, I am satisfied that the plaintiffs have established a serious question to be tried in relation to whether the threats allegedly made by Mr Matic amount to a threat to infringe the plaintiffs' rights by the tortious conduct I have outlined.

Balance of convenience

152 It is then necessary to assess the balance of convenience, that is in essence, which party will be most inconvenienced or prejudiced by the continuation of the interim orders. That assessment is necessary in order to determine the means by which the least injustice may be inflicted on the parties pending the ultimate resolution of the dispute.

153 The plaintiffs have pointed to the economic and reputational loss they are likely to suffer if Mr Matic is not restrained and the complaints are ultimately justified. Mr Matic complains that the orders will unjustifiably restrict his freedom.

154 In my view the balance of convenience favours the grant of interlocutory relief. Mr Matic complains that he does not, in any event, intend to do the things the subject of the restraint and denies that he threatened to do so. In the circumstances, there will be little, if any, prejudice to him by not being able to do things he says he has no intention of doing. Mr Matic complains that he may wish to visit one of the plaintiffs' home opens for the purpose of inspecting a potential home. However, there is no evidence that Mr Matic is currently in the market for such a home and in any event, he is capable of arranging a private inspection. A public home open is not the only means of inspecting a home currently for sale.

Orders

155 In all the circumstances, I consider that the interim orders should be maintained.

156 I will make one adjustment to the interim orders. Order 1(iv) restrains Mr Matic from 'threatening the first plaintiff'. On reflection, I think such an order potentially extends beyond that which is necessary to preserve the legitimate interests of the first plaintiff in all the circumstances. For example, Mr Matic is quite entitled to threaten the plaintiffs with the making of legitimate complaints and the issuing of legal proceedings. I will qualify the order so that it restrains Mr Matic from the threatening economic, reputational, or physical harm to the plaintiffs.

The Contempt Application

157 I turn now to deal with the first plaintiff's Contempt Application. In essence, Ms Yap alleges that Mr Matic disobeyed the orders of the court made on 11 February 2022 by threatening her. By chambers summons dated 22 March 2022, Ms Yap sought an orders in the following terms:

> (1) The defendant be committed for contempt of this Honourable Court, by his conduct in threatening the first plaintiff in an email sent by the defendant to Mr Martin Bennett dated 15 March 2022 in breach of order 1(iv) of the Orders of Justice Solomon made 11 February 2022 as this Honourable Court thinks fit.
>
> (2) The defendant pay the first plaintiff's costs of this application on an indemnity basis to be assessed and paid forthwith.

158 In support of the Contempt Application, Ms Yap filed the following affidavits:

(a) Fourth affidavit of Jessica Louise Border affirmed 30 March 2022;

(b) Fifth affidavit of Jessica Louise Border affirmed 8 April 2022;

(c) Sixth affidavit of Jessica Louise Border affirmed 12 April 2022;

(d) Affidavit of Lee Ann Fitzgerald sworn 30 March 2022; and

(e) Second Affidavit of Vivien Jit Sien Yap sworn 25 March 2022.

159 Notwithstanding the opportunity to do so pursuant to the court's order of 1 April 2022, Mr Matic did not file evidence in relation to the Contempt Application.

160 In the affidavts filed on her behalf, and in written and oral submissions, Ms Yap pointed to three instances of Mr Matic's conduct which she maintained amounted to a breach of the order not to threaten her, thereby constituting a contempt.

161 The first instance is detailed in the affidavit of Lee Fitzgerald. Ms Fitzgerald is the general manager of Ray White. In that capacity, she was involved in the preparation for settlement of the sale of Mr Matic's home. On 4 March 2022, Mr Matic sent an email to Ms Fitzgerald (copied to Ms Yap) in which Mr Matic asked Ray White

for comment 'publically (sic) and on the record' in relation to a series of questions regarding the sale of a different property in which he had no involvement.

162 On 14 March 2022, Ms Fitzgerald attended Mr Matic's property to conduct a pre-settlement inspection together with the purchasers. Mr Matic would not permit anyone from Ray White to enter. The purchasers conducted the inspection alone. Ms Fitzgerald's affidavit evidence was that on that occasion, Mr Matic handed her a hard copy of the email of 4 March 2022 and said 'do you have a response to this before it goes to the papers?'.

163 As I have noted, Mr Matic did not file any responsive evidence to the first plaintiff's application. However, from the bar table Mr Matic flatly denied that he said this.[76]

164 The second instance relates to Mr Matic's email to Bennett + Co of 16 March 2022 which I have referenced at [135] above. The pertinent section of the email reads as follows:

> For one final time I would request that your client stops telling lies about me if they don't want me telling the truth about them.
>
> I urge you to assess the matters at hand impartially & advise your client that it is in their best interests to get this ridiculous matter dropped before I start issuing subpoenas for production of documents & access to email correspondence & submitting Freedom of Information requests to The Australian Health Practitioner Regulation Agency (AHPRA) to demonstrate to the courts that this sort of illegal & criminal behaviour started long before Ms Yap and I crossed paths.
>
> Along with sworn affidavits from ex employee's detailing ongoing unethical & illegal practices, misleading & lying to clients I don't see how even a highly respected & accomplished lawyer like yourself could possibly get the judge to look the other way and ignore the mounting evidence showing lifetime of corruption.
>
> I am prepared to risk it all & lose everything I've got to see this through right to the end even if it means that it will all be to me detriment.

165 Mr Matic maintained that this was not a threat but rather was directed, not at Ms Yap, but at the plaintiff's' lawyer, Mr Bennett, to 'assess the actual evidence'.[77] It was put to Mr Matic that the email amounted to a threat to gather and disclose adverse information about

[76] ts 12 April 2022, 94.
[77] ts 12 April 2022, 85.

Ms Yap. Mr Matic rejected that characterisation, submitting variously that it was not a threat because it was an attempt 'to get Mr Bennett to be honest', it was in the public interest, and it wasn't a threat to cause physical harm because 'words are not painful'.[78] As to Mr Matic's reference to enquiries about Ms Yap that did not relate to the sale of his home, Mr Matic explained that saying 'if someone is doing unethical breaches of conduct within one industry, it just makes sense that they will do it [in] a second industry'.[79]

166 The third instance relates to an exchange of emails between Mr Matic and Ms Fitzgerald on 24 March 2022 following settlement of the sale contract on 22 March 2022. It appears that notwithstanding the settlement, Mr Matic had not vacated the premises. Ms Fitzgerald emailed Mr Matic in unremarkable terms raising matters relating to the handing over of possession to the purchasers. Mr Matic responded in the following terms:

> Do not copy my ex wife into my private & confidential matters.
>
> Secondly, you are illegally holding proceeds from the sale of property.
>
> Thirdly, I've got nowhere to go as I cant get a rental due to the fact your company has started fictitious claims against me in Supreme Court in order to gag me about my experiences with Ray White.
>
> You might have to get the authorities involved.

167 Ms Yap maintained that the phrase '[y]ou might have to get the authorities involved' was a threat that Mr Matic would do something that would warrant police involvement.

168 Mr Matic explained that in context, the words did not convey that meaning. Rather, he was asserting in the email that the court proceedings issued by the plaintiffs had caused him to be unable to procure alternative premises, such that he could not vacate because he had nowhere to go and it might therefore indeed be necessary 'to get the authorities involved'. Further, Mr Matic explained that he was simply responding to statements made to him that if he did not vacate the property, it may be necessary to get the authorities involved. The phrase was borrowed from a threat made to him.

169 At the hearing, Mr Matic did not produce any evidence that this threat of involving the authorities was conveyed to him. On 13 April

[78] ts 12 April 2022, 86.
[79] ts 12 April 2022, 87.

2022, Mr Matic filed his ninth affidavit in which he produced copies of email correspondence between his solicitors and solicitors for the purchaser of Mr and Mrs Matic's home. The exchange includes an email from lawyers for the purchaser following settlement demanding vacant possession of the property failing which 'the Buyer will be forced to involve the authorities'. I note that in the same exchange Mr Matic appears to express his surprise that the settlement had gone through, blames his own lawyers for alleged miscommunication and suggested that his lawyers had not followed his instructions.

Legal Principles - Contempt of Court

170 The applicable principles are not in doubt and may be relevantly summarised as follows:[80]

(a) there is a distinction between civil and criminal contempt of court. Here, the application concerns a civil contempt because it arises in the context of a private individual interest. There is some debate about the significance of the distinction but it is plain that even with a civil contempt, the defendant to the application is entitled to a presumption of innocence, the applicant bears the burden of proof of the defendant's guilt, and the defendant's guilt must be proven beyond reasonable doubt;[81]

(b) there must have been an order of the court;

(c) the terms of the court's order must be clear, unambiguous and capable of compliance;

(d) the order was must have been served on the defendant;

(e) the defendant must have had knowledge of the order;

(f) the defendant must have breached the order; and

(g) the act constituting the breach must have been deliberate and voluntary. This does not require a conscious intention to break the law. Deliberate means the conduct was not casual, accidental, or unintentional.

[80] See ***Porter v Steinberg*** [2019] WASC 291 [37]; ***Caratti v Boban Pty Ltd (Administrators Appointed) [No 2]*** [2015] WASC 139 [74] – [88]; ***Fu v Winstar Group Pty Ltd [No 3]*** [2020] WASC 222 [32].
[81] ***Allbeury v Corruption and Crime Commission*** [2012] WASCA 84; 42 WAR 425 [61] - [64] (Buss JA).

171 Ms Yap contends that each of the three instances constituted a breach of the court's orders not to threaten her. There was plainly an order of the court restraining Mr Matic from threatening Ms Yap. That order was clear and capable of compliance. I am satisfied that the order was served on Mr Matic and that he knew of the order. Indeed, Mr Matic did not contend otherwise. It was made clear to Mr Matic in open court that the orders of 11 February 2022 continued to apply to him. I am also satisfied that, to the extent that Mr Matic's conduct is established to the requisite standard, it was deliberate and voluntary.

172 The real question is whether the first plaintiff has established beyond reasonable doubt the alleged conduct of Mr Matic, and whether that conduct constituted a threat to Ms Yap and thus a breach of the order.

173 The first allegation relates to an oral statement allegedly made by Mr Matic to Ms Fitzgerald. Mr Matic flatly denied the allegation. Ms Fitzgerald's evidence was not tested by cross-examination. In the circumstances I am not prepared to find beyond reasonable doubt that Mr Matic breached the order.

174 In relation to the third allegation, Mr Matic says he was responding to a statement made on behalf of the purchaser that if he did not vacate the property the 'authorities' would have to be involved. His response was not a threat to do something that warranted police intervention, but rather to the effect that he was just not in a position at that time to provide vacant possession and he accepted that may mean the purchaser may involve the authorities.

175 The explanation proffered by Mr Matic in my view is open. The email exchange is quite capable of bearing the connotation for which Mr Matic contends. The matter was not tested through cross-examination. In the circumstances I am not prepared to find to the requisite standard that Mr Matic breached the order.

176 Although I have concluded, in respect of the first and third allegations that the first plaintiff has not established the contempt on the evidence, the Contempt Application in any event faces a significant hurdle. I have set out above the terms of the summons. Order 55 r 5(1) provides:

> **Form and service of notice or summons**

> (1) The notice of motion or summons (as the case may be) must specify the contempt of which the contemnor is alleged to be guilty, and be entitled in the proceeding, if any, with reference to which the contempt is alleged to have been committed or if it is not alleged to have been committed with reference to a particular proceeding, shall be entitled 'The State of Western Australia against' the contemnor (naming him) ex parte the applicant.

177 In ***R v Lovelady; Ex parte Attorney-General***, Burt CJ, with whom Wickham J agreed, stated (with citations omitted):

> The Rules (O 55, r 5(1)) require that 'the notice of motion … specify the contempt of which the contemnor is alleged to be guilty' and, in my opinion, the contempt specified must be strictly proved and proved beyond reasonable doubt. '…[N]o person ought to be punished for contempt of court unless the specific charge against [him/her] be distinctly stated and an opportunity of answering it given to [him/her]. … Resting as it does upon accepted notions of elementary justice, this principle must be rigorously insisted upon'.[82]

178 In ***Carew-Reid & Ors v Carew Corporation Pty Ltd***, Malcolm CJ (with whom Franklyn and Nicholson JJ agreed) observed that (with citations omitted):

> [I]n my opinion, the effect of O 55 r 5 is that the notice of motion or summons, as the case may be, must contain all necessary particulars in relation to the substance of the allegation within the four corners of the document...In my opinion, it is quite clear from the authorities that any deficiency in the particulars going to the substance of the charge of contempt cannot be made up by resort to affidavit evidence.[83]

179 It is plain that the first plaintiff's summons made no reference to the first and third allegations of contempt. In those circumstances, the application was deficient.

180 It may be possible for leave to be granted to amend the summons to include sufficient information so as to comply with the requirements of O 55 r 5.[84] However, in circumstances where the evidence has not established a breach to the requisite standard, I would not be prepared to entertain an application for leave in respect of the first and third allegations of contempt.

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[82] ***R v Lovelady; Ex parte Attorney-General*** [1982] WAR 65; [1981] WASC 329, 7.
[83] ***Carew-Reid & Ors v Carew Corporation Pty Ltd*** (Unreported, WASC, Library No 930254, 23 April 1993) 6 - 7*;* ***Mervyn Jonathan Kitay in his capacity as liquidator of Computer Accounting and Tax Pty Ltd (in liq) and Computer Accounting and Tax Pty Ltd (in liq) [No 3]*** [2021] WASC 447 [20] - [24].
[84] ***R v Pearce*** (1992) 7 WAR 395; [1992] WASC 341.

181 The second allegation of contempt suffers from a similar, but less manifest deficiency. The summons refers to an allegation of contempt constituted by Mr Matic's email to Mr Bennett dated 15 March 2022. As is apparent from the discussion of the evidence above, the relevant email was in fact dated 16 March 2022. Accordingly, the summons did not comply with the requirements of O 55 r 5.

182 There is no doubt that the hearing proceeded on the basis that the alleged contempt concerned the email 16 March 2022 and both parties conducted their case on that basis. However, as the summons is deficient, the application as presently constituted cannot succeed. However, I have not at this stage, formed the view that the evidence is incapable of establishing a contempt beyond reasonable doubt in respect of the email of 16 March 2022. In the circumstances, at this point I shall not dismiss the application but I shall hear from the parties as to its further conduct.

Orders

1. The defendant is restrained and injunction is granted restraining the defendant until further order of this Honourable Court from:

    (i) attending or attempting to attend at any premises at which the first and/or second plaintiff are conducting an invited public viewing or 'home open' in respect of the proposed sale of such premises;

    (ii) erecting signage or any form of public notice of or concerning the first and/or second plaintiff are conducting a 'home open'; and

    (iii) threatening economic, reputational, or physical harm to the plaintiffs.

2. The costs of and incidental to the hearing of 10 March 2022 be paid by the defendant, to be taxed if not agreed and payable within 14 days.

3. The first plaintiff's application by chamber summons dated 22 March 2022 for committal of the defendant for contempt of court be adjourned.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

IS
Associate to the Honourable Justice Solomon

23 MAY 2022